No. 96-1581

In The

Supreme Court of the United States

October Term, 1996

STATE OF SOUTH DAKOTA,

Petitioner,

v.

YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members; DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,

Respondents,

and

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a nonprofit corporation,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1-202

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Petition For Certiorari Filed April 4, 1997
Certiorari Granted June 9, 1997

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
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U.S. District Court
District of South Dakota (Southern Div)

CIVIL DOCKET FOR CASE #: 94-CV-4217

Yankton Sioux Tribe, et al v. Southern Missouri
Assigned to: Lawrence L. Piersol Filed: 09/28/94
Demand: $0,000 Nature of Suit: 893
Lead Docket: None Jurisdiction: Federal
Dkt# in other court: None Question

Cause: 42:6901 Resource & Recovery Act

YANKTON SIOUX TRIBE, a federally recognized tribe of Indians and its individual members plaintiff	Robin L. Zephier [COR LD NTC] Abourezk Law Offices PO Box 9460 Rapid City, SD 57709 342-0097 Michael H. Scarmon [COR LD NTC] Stickney & Groe PO Box 579 117 W. Main St. Elk Point, SD 57025 356-2129 James G. Abourezk [COR LD NTC] Abourezk Law Offices, PC PO Box 1164 Sioux Falls, SD 57101-1164 334-8402
DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe plaintiff	Robin L. Zephier (See above) [COR LD NTC] Michael H. Scarmon (See above) [COR LD NTC]

	James G. Abourezk (See above) [COR LD NTC]
v.	
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation defendant	Kenneth W. Cotton [COR LD NTC] Wipf & Cotton PO Box 370 Wagner, SD 57380 384-5471
==========	
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT third-party plaintiff	Kenneth W. Cotton [COR LD NTC] Wipf & Cotton PO Box 370 Wagner, SD 57380 384-5471
v.	
SOUTH DAKOTA, STATE OF third-party defendant	Roxanne Giedd [COR LD NTC] John P. Guhin [COR LD NTC] Charles D. McGuigan [COR LD NTC] Attorney General's Office 500 E. Capitol Pierre, SD 57501-5070 773-3215

9/28/94	1	VERIFIED COMPLAINT: 1 summons(es) issued handed to plaintiff's counsel (kj) [Entry date 09/29/94]
9/28/94	2	CIVIL COVER SHEET (kj) [Entry date 09/29/94]

9/28/94	–	FILING FEE PAID: on 9/28/94 in the amount of $ 120, receipt # 08082. (kj) [Entry date 09/29/94]
9/28/94	3	MOTION for temporary restraining order, and for preliminary injunction by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (kj) [Entry date 09/29/94]
9/28/94	3	MEMORANDUM by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in support of motion for temporary restraining order [3-1], of motion for preliminary injunction [3-2] (kj) [Entry date 09/29/94]
10/20/94	4	ANSWER by defendant Southern Missouri to complaint [1-1] (kt) [Entry date 10/24/94]
10/20/94	5	THIRD-PARTY COMPLAINT: by defendant Southern Missouri; adding SD, State of (kt) [Entry date 10/24/94]
10/20/94	6	RESPONSE by defendant Southern Missouri to motion for temporary restraining order [3-1], motion for preliminary injunction [3-2] (kt) [Entry date 10/24/94]
10/26/94	7	ORDER by Lawrence L. Piersol setting hearing on motion for temporary restraining order [3-1] 9:00 10/28/94, setting hearing on motion for preliminary injunction [3-2] 9:00 10/28/94 (cc:all counsel) (jm)
10/28/94	8	EXHIBIT LIST by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau, defendant Southern Missouri (dm)

10/28/94	9	MINUTES RE: Enter hearing on Plaintiffs' motions for temporary restraining order and preliminary injunction before the Hon. Lawrence L. Piersol, Judge. Motions Denied. Trial date set: 1-31-95 @ 9:00 AM. (dm)

* * * *

10/28/94	10	ORDER by Lawrence L. Piersol denying motion for temporary restraining order [3-1], denying motion for preliminary injunction [3-2]; Court trial set for 1/31/95 at 9:00 a.m. ; Motion filing ddl set for 12/22/94 ; Discovery ddl set for 12/15/94 (cc:all counsel) 1994 SDOB 464 (jm) [Entry date 10/31/94]
11/7/94	11	ANSWER by third-party defendant SD, State of to Complaint [1-1] (dm)
11/7/94	12	ANSWER TO THIRD PARTY COMPLAINT [5-1] by third-party defendant SD, State of (dm)

* * * *

12/15/94	16	MOTION for summary judgment by third-party defendant SD, State of (dm)
12/15/94	17	MEMORANDUM/BRIEF by third-party defendant SD, State of in support of motion for summary judgment [16-1] (dm) [Edit date 12/15/94]
12/15/94	18	STATEMENT of Material Facts by third-party defendant SD, State of in support of its motion for summary judgment [16-1] (dm)
12/15/94	19	APPENDIX by third-party defendant SD, State of in support of its motion for

summary judgment [16-1] (not fastened in) (dm) [Edit date 01/18/95]

* * * *

12/15/94	24	MEMORANDUM/AFFIDAVIT of Robin L. Zephier by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in support of motion to continue trial [23-1] (dm)

* * * *

12/23/94	32	MOTION for summary judgment by defendant Southern Missouri (dm) [Entry date 12/27/94]
12/23/94	33	MEMORANDUM by defendant Southern Missouri in support of motion for summary judgment [32-1] (dm) [Entry date 12/27/94]
1/9/95	34	RESPONSE by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau to motion for summary judgment [16-1] (sh) [Entry date 01/10/95]
1/9/95	35	MEMORANDUM/Brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in support of motion response [34-1] (sh) [Entry date 01/10/95]
1/9/95	36	STATEMENT of Contested Material Facts to third party defendant by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (sh) [Entry date 01/10/95]
1/17/95	37	MEMORANDUM/Brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in opposition to motion for summary judgment [32-1] (sh)

1/18/95 38 REPLY by third-party defendant SD, State of to Tribe's response to Motion for Summary Judgment [34] (dm)

1/18/95 39 SUPPLEMENTAL APPENDIX by third-party defendant SD, State of to Defendant's Reply Re Motion for Summary Judgment [16-1] (not fastened in) (dm) [Edit date 01/18/95]

* * * *

1/26/95 47 MEMORANDUM/Brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in support of motion to strike third party claim [46-1], and of motion to dismiss third party defendant [46-2] (sh)

* * * *

2/1/95 54 ORDER by Lawrence L. Piersol denying motion to dismiss third party defendant [46-2], denying motion in limine prohibiting the testimony of Leigh Price, Leonard Bruigier, Fred Nickalson and Mark Leutbecker [44-1], granting motion in limine prohibiting the Tribe from introducing evidence at the trial for its failure to comply with FRCP 26(a)(3)(C) [44-2] ; Court trial set for 4/3/95 at 1:00 p.m. (cc:all counsel) 1995 SDOB 32 (jm) [Entry date 02/02/95]

* * * *

2/3/95 56 TRANSCRIPT of TRO hearing held on 10/28/94 (in expando) (sh) [Entry date 02/06/95]

* * * *

3/22/95 69 TRIAL BRIEF submitted by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (sh)

3/22/95 70 TRIAL BRIEF submitted by third-party defendant SD, State of (sh)

* * * *

3/23/95 72 TRIAL BRIEF submitted by defendant Southern Missouri (sh)

* * * *

3/29/95 75 RESPONSE to defendant's trial brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (sh) [Entry date 04/10/95]

3/29/95 76 RESPONSE to third-party defendant's trial brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (sh) [Entry date 04/10/95]

3/29/95 77 RESPONSE by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau to motion for order to prohibit the introduction of certain evidence [66-1] (sh) [Entry date 04/10/95]

3/29/95 78 MEMORANDUM/Brief by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau in support of motion response [77-1] (sh) [Entry date 04/10/95]

3/29/95 79 REPLY BRIEF by third-party defendant SD, State of (sh) [Entry date 4/10/95]

3/29/95 80 RESPONDING BRIEF by defendant Southern Missouri (sh) [Entry date 04/10/95]

* * * *

3/31/95	86	ORDER by Lawrence L. Piersol denying motion for summary judgment [32-1], denying motion for summary judgment [16-1] (cc:all counsel) (sh) [Entry date 04/03/95]
* * * *		
4/4/95	88	TRANSCRIPT of Court Trial testimony of Herbert Hoover held on 4/3/95 (in expando) (sh) [Entry date 04/05/95]
* * * *		
4/7/95	90	EXHIBIT LIST by third-party defendant SD, State of (sh) [Entry date 04/10/95]
4/7/95	91	EXHIBIT LIST by defendant Southern Missouri (sh) [Entry date 04/10/95]
* * * *		
4/7/95	92	MINUTES RE: Court Trial from 4/3/95 through 4/7/95 before the Hon. Lawrence L. Piersol, Sioux Falls, SD (sh) [Entry date 04/10/95]
* * * *		
5/2/95	93	POST-TRIAL BRIEF by third-party defendant SD, State of (dm) [Entry date 05/03/95]
5/2/95	94	BRIEF by third-party defendant SD, State of, Regarding Section Eighteen Issues (dm) [Entry date 05/03/95]
5/2/95	95	APPENDIX by third-party defendant SD, State of to Brief of Third Party Defendant State of South Dakota Regarding Section Eighteen Issues [94-1] (not fastened in) (dm) [Entry date 05/03/95]

* * * *

5/2/95	97	POST TRIAL BRIEF: Article XVIII of Articles of Agreement between Yankton Sioux Tribe The United States Government submitted by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (dm) [Entry date 05/03/95]
5/2/95	98	SUPPLEMENT/SUMMARY of Trial Evidence by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (dm) [Entry date 05/03/95]
5/2/95	99	POST TRIAL BRIEF by defendant Southern Missouri Recycling and Waste Management District (lz) [Entry date 05/04/95]
* * * *		
6/14/95	100	MEMORANDUM OPINION AND ORDER by Lawrence L. Piersol; that Congress did not disestablish boundaries of Yankton Sioux Reservation and therefore exterior boundaries remain intact; plaintiffs failed to establish that the Tribe may exercise jurisdiction over proposed landfill on non-Indian land within exterior boundaries; that Southern Missouri may proceed with construction of waste disposal at the selected site; that during construction Southern Missouri will install a composite liner; and other relief requested is denied (cc: all counsel) Correct Copy Entered 1995 SDOB Page #223 (sh) [Entry date 06/15/95]
6/14/95	101	JUDGMENT by Lawrence L. Piersol; dismissing case 1995 Southern Division

Order Book, page 224; (cc: all counsel) (sh) [Entry date 06/15/95]

6/21/95 102 AFFIDAVIT of Timothy R. Whalen (sl)

6/21/95 103 MOTION for injunction pending appeal by third-party defendant SD, State of (lz)

6/21/95 104 MEMORANDUM by third-party defendant SD, State of in support of motion for injunction pending appeal [103-1] (lz)

6/21/95 105 NOTICE OF APPEAL by third-party defendant SD, State of from [101-2] , Appeal fee pd. – cc: all counsel, Ct Rptr (lz)

* * * *

6/23/95 109 MINUTES RE: Enter hearing on motion by third party defendant State of South Dakota for injunction pending appeal before the Hon. Lawrence L. Piersol, Judge. Ruling: Taken Under Advisement and Court to rule on motions later today; Stay ends Saturday 6/24/95. (dm)

* * * *

6/23/95 116 ORDER GRANTING STAY by Lawrence L. Piersol granting motion for injunction pending appeal [103-1] (1995 SDOB Page 232) (cc:all counsel mailed on 6/23/95) (dm) [Entry date 06/26/95]

* * * *

6/26/95 118 AMENDMENT by third-party defendant SD, State of to motion for injunction pending appeal [103-1] (lz)

* * * *

7/3/95 120 MEMORANDUM OPINION on Stay Pending Appeal granting stay without requiring supersedeas bond be posted by the State by Lawrence L. Piersol (cc: all counsel) Correct Copy Entered 1995 SDOB Page # 276 (dm) [Entry date 07/05/95]

* * * *

8/21/95 125 TRANSCRIPT of Court Trial held on April 3, 1995, before the Honorable Lazwrence [sic] L. Piersol, Sioux Falls (VOLUME I) [92-1] (in expando) (lz) [Entry date 08/22/95]

8/21/95 126 TRANSCRIPT of Court Trial held on April 4, 1995, before the Honorable Lawrence L. Piersol, Sioux Falls (VOLUME II) [92-1] (in expando) (lz) [Entry date 08/22/95]

8/21/95 127 TRANSCRIPT of Court Trial held on April 5, 1995, before the Honorable Lawrence L. Piersol, Sioux Falls, (VOLUME III) [92-1] (in expando) (lz) [Entry date 08/22/95]

8/21/95 128 TRANSCRIPT of Court Trial held on April 6, 1995, before the Honorable Lawrence L. Piersol, Sioux Falls (VOLUME IV) [92-1] (in expando) (lz) [Entry date 08/22/95]

8/21/95 129 TRANSCRIPT of Court Trial held on April 7, 1995, before the Honorable Lawrence L. Piersol, Sioux Falls (VOLUME V) [92-1] (in expando) (lz) [Entry date 08/22/95]

2/20/96 130 MOTION to vacate stay pending appeal by plaintiff Yankton Sioux Tribe, plaintiff Darrell E. Drapeau (sh)

• • • •

2/27/96 135 MEMORANDUM/RESPONSE by third-party defendant SD, State of in opposition to motion to vacate stay pending appeal [130-1] (ds)

• • • •

2/29/96 137 ORDER by Lawrence L. Piersol granting motion to vacate stay pending appeal [130-1], vacating [116-1] order (cc:all counsel) 1996 SDOB page 89 (sh) [Entry date 03/01/96]

7/29/96 138 MOTION with Exhibits A and B for relief from judgment FRCP 60(b) by defendant Southern Missouri (sl)

• • • •

8/5/96 140 MEMORANDUM/RESISTANCE by plaintiff Yankton Sioux Tribe in opposition to motion for relief from judgment FRCP 60(b) [138-1] (dm) [Entry date 08/06/96]

• • • •

12/11/96 161 ORDER by Lawrence L. Piersol granting motion for relief from judgment FRCP 60(b) [138-1]; that the 6/14/95 Memorandum Opinion and Order and Judgent [sic] entered in this case are amended to delete the requirement that "during construction of the solid waste disposal facility, Southern Missouri will install a composite liner as defined in 40

C.F.R. 258.40(b)."; that the defendant must make good faith efforts to comply with all conditions imposed by the EPA as efforts to comply with all conditions imposed by the EPA as a condition of granting the composite liner waiver; that the Court expressly retains jurisdiction to hear a motion for comtempt [sic] in the event the defendant does not comply with this Order by making good faith efforts to satisfy any condition imposed by the EPA as a condition of granting the composite liner waiver (cc:all counsel) (ds) [Entry date 12/13/96]

• • • •

1/9/97 164 ORDER from 8th Circuit COA denying suggestion for rehearing en banc; petition for rehearing by panel is also denied; Judge Wollman took no part in this case. (lz)

• • • •

4/21/97 175 PETITION FOR WRIT OF CERTIORARI filed in U.S. Supreme Court (lz)

EIGHTH CIRCUIT COURT OF APPEALS

DOCKETING STATEMENT

* * * *

Proceedings include all events.
95-2647 Yankton Sioux Tribe, et al v. State of SD

Caption

YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members; DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe

Plaintiffs - Appellees

v.

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation

Defendant-Third party plaintiff - Appellee

v.

STATE OF SOUTH DAKOTA

Third party defendant - Appellant

CHARLES MIX COUNTY, SOUTH DAKOTA; FLANDREAU SANTEE SIOUX TRIBE, INC.; UNITED STATES OF AMERICA;

Amicus Curiae

VINE DELORIA, JR.; PHILIP S. DELORIA; PHILIP LANE, SR.; PHILIP LANE, JR.; JAMES WEDDELL, Descendants of Francois Deloria, Signatory to the Treaty of 1858, and descendants and relatives of Philip J. Deloria, Chief of the Yankton Sioux Tribe, at the time of the negotiation and ratification of the agreement of December 31, 1892.

Amici Curiae

6/28/95	Civil Case Docketed. (jmb) [95-2647]
6/28/95	CERTIFIED copies notice of appeal, docket entries, order and judgment of 6/14/95 and order of 6/23/95 granting stay waiving supersedeas bond pending appeal. [95-2647] [588904] (jmb) [95-2647]

* * * *

9/18/95	BRIEF FILED – Brief of Appellant – State of SD 64 pgs w/addendum . . . .
9/18/95	RECORDS received. Appendix filed by Appellant State of SD consisting of 2 Volume(s), 3 Copies. . . .
9/19/95	ERRATA sheet received for brief of Appellant State of SD, as well as copy of the 6/23/95 district court order. Both inserted into aplnt's brief. . . .

* * * *

9/21/95	BRIEF FILED – Brief of Amicus-Curiae – Charles Mix County, South Dakota, on behalf of appellant – 20 pages – w/service 9/20/95 . . . .
9/21/95	ADDENDUM FILED – Amicus – (CHARLES MIX COUNTY, SD) addendum. 10 copies w/service 9/20/95. . . .

* * * *

9/28/95	RECORDS received: Transcript, consisting of 9 Volumes (5 trial, 1 TRO Hrg., 2 Testimony, 1 Partial). Location STP. . . .
9/28/95	RECORDS received: Exhibits, Located in: STP, consisting of Plaintiff's Exhs. 1,2,3 an Defendant's Exhs. A, B, C. . . .

* * * *

10/11/95 MOTION, with brief in support, of aplnt, State of SD, to supplement the record. . . .

* * * *

10/17/95 ORDER filed: Appellant's motion to enlarge record is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits. . . .

10/18/95 BRIEF FILED – Brief of Appellees – Yankton Sioux Tribe, Darrell E. Drapeau. 60 pgs – w/addendum – 10 copies – w/service 10/17/95. . . .

10/18/95 RECORDS received: Appendix filed by Appellees Yankton Sioux Tribe, Appellees Darrell E. Drapeau, Appellee Southern MO Waste consisting of 1 Volume(s), 3 Copies. . . .

* * * *

10/19/95 BRIEF FILED – Brief of Amicus-Curiae FLANDREAU SANTEE SIOUX TRIBE, SD – on behalf of aplees – 15 pgs – 10 copies w/service 10/16/95. . . .

10/19/95 BRIEF FILED – Brief of Amicus-Curiae USA – on behalf of aplees – 20 pgs – 10 copies w/service 10/18/95. . . .

10/19/95 BRIEF FILED – Brief of Amicus-Curiae – Vine Deloria, Philip S. Deloria, Philip Lane, Philip Lane, James Weddell on behalf of aplees – 19 pgs – copies w/service 10/18/95. . . .

10/20/95 RESPONSE of aplee, Yankton Sioux Tribe, Darrell E. Drapeau, in opposition to appellant motion to supplement record filed by State of SD . . . .

* * * *

10/31/95 RECORD TENDERED: Supplemental Appendix filed by Appellant State of SD consisting of 1 Volume(s), 3 Copies . . . .

11/1/95 BRIEF FILED – Reply brief – State of SD. 25 pgs – 10 copies – w/service 10/31/95. . . .

11/2/95 RECORDS received: Appendix filed by Amici Curiae Vine Deloria consisting of 1 Volume(s), 3 Copies. . . .

* * * *

12/4/95 Brief Correction(s) received from Amici Curiae Vine Deloria. Correction(s): 6 copies of AMICUS (Deloria, et al.) briefs received. Filestamped 10/19/95, with history #631454. . . .

* * * *

2/26/96 JUDGE ORDER: Due to Judge Wollman recusing himself from this matter, this case is hereby removed from the March 1996 calendar and will be rescheduled on the May 1996 calendar in St. Paul, Minnesota. . . .

2/26/96 CASE REMOVED FROM CALENDAR. . . .

3/8/96 Notice from amicus USA of related case, dated 3/5/96, from Tseming Yang for Amicus Curiae USA in 95-2647. . . .

3/11/96 MOTION, with supporting memorandum, of aplnt, State of SD in 95-2647, for stay. [95-2647] [683988] w/service 3/8/96. . . .

* * * *

3/20/96 RESPONSE of aplee, Yankton Sioux Tribe in 95-2647, in opposition to appellant motion for stay filed by State of SD. . . .

* * * *

3/25/96 MOTION of amicus curiae United States to file response to aplnt's motion for stay. TO COURT. . . .

3/25/96 RECEIVED reply from Amicus Curiae United States in 95-2647 to aplnt's motion for stay. TO COURT. . . .

4/1/96 ERRATA sheet (titled Attachment I) received for memorandum of Amicus Curiae USA responding to aplnt's motion for stay in 95-2647. [95-2647] Also received copy of slip opinion cited by Amicus Curia USA on page 5 of memorandum. [692854] TO COURT. . . .

4/4/96 JUDGE ORDER: granting amicus USA's motion to file reply to aplnt's motion for stay, and [6869918-1] [95-2647] [693690], denying appellant's motion for stay [683988-1] filed by State of SD. . . .

4/4/96 RESPONSE of amicus curiae, USA in 95-2647, to appellant's motion for stay filed by State of SD [683988-1] [95-2647]. . . .

5/6/96 ERRATA sheet received for brief of Amicus Curiae USA in 95-2647. . . .

5/7/96 28(j) citation received and filed from Appellant State of SD in 95-2647 TO COURT. . . .

5/8/96 RESPONSE to 28(j) citation filed by Appellees Yankton Sioux Tribe in 95-2647, Appellees Darrell E. Drapeau in 95-2647. TO COURT. . . .

5/13/96 ARGUED AND SUBMITTED IN ST. PAUL TO JUDGES Richard S. Arnold, Chief Judge, Frank J. Magill, Circuit Judge, Diana E Murphy, Circuit Judge. John P. Guhin for Appellant State of SD, James G. Abourezk for

Appellees Darrell E. Drapeau, Appellees Yankton Sioux Tribe, Tseming Yang for Amicus Curiae USA. Rebuttal by: John P. Guhin. RECORDED. . . .

7/1/96 28(j) citation received and filed from Appellant State of SD in 95-2647 TO COURT. . . .

10/24/96 THE COURT: Richard S. Arnold, Frank J. Magill, Diana E. Murphy. OPINION FILED by Diana E. Murphy PUBLISHED, DISSENT by Frank J. Magill. . . .

10/24/96 JUDGMENT: Richard S. Arnold, Frank J. Magill, Diana E. Murphy: The judgment of the lower court is AFFIRMED in accordance with the opinion . . . .

12/6/96 PETITION for REHEARING with suggestions for rehearing en banc. Filed by appellee Southern MO Waste in 95-2647, w/service 12/5/96., TO COURT. . . .

12/9/96 BRIEF FILED – Brief of Amicus-Curiae – Charles Mix Cty. in 95-2647 in support of South Dakota's petition for rehearing with suggestion for rehearing en banc. 16 pgs – 21 copies with service 12/6/96. TO COURT. . . .

* * * *

12/23/96 RESPONSE to petition for Rehearing with suggestion for rehearing en banc filed by Southern MO Waste [788781-1] [794164]. (Overlength by 5 pages) Response filed by Yankton Sioux Tribe in 95-2647, Darrell E. Drapeau in 95-2647. w/service 12/20/96 TO COURT.

1/6/97 JUDGE ORDER: denying petition for Rehearing with suggestion for rehearing en banc

[788781-1] filed by Southern MO Waste. Judge Bowman, Judge Magill and Judge Loken would grant the suggestion. Petition for panel Rehearing is also denied. Judge Wollman took no part in the consideration or decision of this case. . . .

1/14/97 MANDATE ISSUED [95-2647]. . . .

* * * *

4/14/97 U.S. Supreme Court notice regarding petition for writ of certiorari. Filed in the Supreme Court on 4/7/97. Supreme Ct. Case No.: 96-1581. . . .

FILED
Sep 28, 1994
William F. Clayton
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,	)	Civ. No. 94-4217
Plaintiffs,	)	VERIFIED COMPLAINT
vs.	)	
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation,	)	
Defendant.	)	

Plaintiff for their complaint against the Defendant, state and allege as follows:

I.

This action arises under article 1, section 8, clause 3 of the United States Constitution; the fifth amendment to the United States Constitution; the Treaty with the Yankton Sioux, 1858, entered into by the United States of America, 11 Stat. 743; 1892 Agreement with the Yankton Sioux or Dakota Indians, in South Dakota, ratified in

1894, 28 Stat. 286; § 13 of Title 25 of the United States Code; the 1851 Treaty of Fort Laramie, entered into by the United States of America with the Yankton Sioux Tribe, 11 Stat. 749; 1601 *et seq.* of Title 25 of the United States Code; § 6924, *et seq.* of Title 42 of the United States Code – the Resource Conservation and Recovery Act, Pub.L. 94-580; § 261.1 *et seq.*, § 264.3 *et seq.* of Title 40 of the Code of Federal Regulations; the 1934 Indian Reorganization Act and subsequent amendments; and the special trust relationship between the Federal government and the Indians.

II.

This Court has jurisdiction under § 1331 of Title 28 of the United States Code; § 1362 of Title 28 of the United States Code; a request for declaratory relief pursuant to § 2201 *et seq.* of Title 28 of the United States Code; and a request for injunctive relief and a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure.

III.

Venue lies in this Court under § 1391(e) of title 28 of the United States Code.

IV.

Plaintiffs are requesting that Defendant be temporarily and permanently restrained from constructing and operating a solid waste disposal facility at the site which lies within the exterior boundaries of the Yankton Sioux

Indian Reservation, said site being near the City of Lake Andes. The South Dakota State Board of Minerals and Environment, on December 23, 1993, granted the permit to Southern Missouri Waste Management District. The United States Environmental Protection Agency has not yet given final permitting authority to the State of South Dakota over the lands within the boundaries of the Yankton Sioux Reservation. The State had already issued a permit to Southern Missouri Waste Management District before having been given permitting authority by the United States Environmental Protection Agency.

V.

Plaintiff Yankton Sioux Tribe is an Indian tribe with a governing body duly recognized by the Secretary of the Interior. Its principal headquarters are located at Yankton Sioux Tribe headquarters in the City of Marty, County of Charles Mix, State of South Dakota. Plaintiff Yankton Sioux Tribe is responsible for the health, safety and welfare of its individual tribal members. Plaintiffs', individual members of the Yankton Sioux Tribe, are enrolled members of the Yankton Sioux Tribe and are protected and secured by the Tribe through the continued duty of the Tribe to regulate, prevent, and render safe any hazardous waste danger to its members by internal or external forces by virtue of the Tribe's responsibility for the health, safety and welfare of its individual tribal members. Plaintiff Darrell E. Drapeau (hereinafter referred to as "Drapeau") is an enrolled member of the Yankton Sioux Tribe.

VI.

Defendant, Southern Missouri Waste Management District (hereinafter "District" formerly known as "Association") is a four-county, non-Indian, not-for-profit, association formed in February 1992 for the purpose of a developing a regional concept for waste disposal. The District's members include the Counties of Charles Mix, Douglas, Gregory and Bon Homme in south central South Dakota. The proposed dump site is located approximately one and one-half miles west of Lake Andes, South Dakota, on property presently owned by Kenneth McBride.

VII.

The proposed dump site is located on the following described land parcel:

> The south one-half north one-quarter (S1/2 N1/4), Section 6, Township 96 North, Range 65 West (S6, T96N, R65W) of the Fifth Principal Meridan [sic], Charles Mix County, South Dakota.

VIII.

The proposed landfill will fill the west half of this eighty-acre parcel. Seven trenches covering approximately thirty acres will be filled with solid waste. The whole site will occupy approximately fifty acres. Based upon reasonable information and belief, it is believed that the District plans to purchase the east forty-acre area for possible future use after the original landfill is developed.

IX.

The Federal government, by and through its executive agency, the United States Environmental Protection Agency, has and had jurisdiction and permitting authority for solid waste landfills. 42 U.S.C. § 6924 *et. seq.* The United States Environmental Protection Agency has that jurisdiction and authority by virtue of the Resource Conservation and Recovery Act of 1976, until such time as the Environmental Protection Agency grants away, in part or in whole, that permitting authority to the State.

The Environmental Protection Agency had never granted the State of South Dakota the permitting authority to grant authorization for construction of the proposed landfill by Southern Missouri Waste Management District.

X.

The permit granted to Southern Missouri Waste Management District by the State of South Dakota is invalid, in that the State issued the permit before it itself was granted the permit-issuing authority by the Federal Environmental Protection Agency. The State was therefore without the proper jurisdiction and legal authority when it granted the landfill permit to Southern Missouri Waste Management District on December 23, 1993.

XI.

The United States Environmental Protection Agency is prohibited, under the United States Constitution, art. III, § 8, cl.3, from passing any laws or regulations relating

to Indians and Indian tribes, or diminishing in any way the rights or lands of Indians or Indian tribes, unless the Congress has so legislated first. The Federal government, by and through its Environmental Protection Agency are also charged with the duty of fulfilling the trust responsibility to the Tribe as established by the treaty and federal law. This trust responsibility must include and encompass the protection of the Tribal members' general health, safety and welfare to protect both those members and the Tribe itself from exposure to obnoxious and hazardous waste dangers. It is clear that a solid waste landfill can and may be an obvious source of such obnoxious and hazardous waste to the Tribe and its members under these circumstances, and taking into account the proposed landfill site's proximity to the Tribe and its people.

XII.

The proposed construction and operation of a solid waste landfill at the proposed site will immediately and forever threaten the health, safety and welfare of the members of the Yankton Sioux Tribe and as well as the Tribe's property interests in the adjacent geographical area.

XIII.

The method of dump site selection was improper in that it was done before any engineering studies on aspects such as hydraulic conductivity, hidden ecological conditions, or borings and soil samples, were done. The site was selected by the Defendant by visual inspection alone, and selection occurred even before Bon Homme

and Gregory Counties were a part of the District. The Defendant chose the proposed site without any meaningful prioritizing of possible alternative locations.

XIV.

Once the District had chosen the proposed dump site, a preliminary site characterization was submitted to the State Department of Environment and Natural Resources in August, 1992, despite the fact that the engineers needed more information to determine a complete understanding of the site's hydro-geologic characteristics.

XV.

The final application for the proposed dump site permit was submitted by the Defendant to the Department on July 29, 1993. No environmental impact statement was prepared. No risk assessment was made. The State Department of Environment and Natural Resources nonetheless published notice of its approval of the proposed landfill on or about December 23, 1993.

XVI.

The proposed landfill site is within one thousand feet of known streams, springs, wells and stock dams. A stream runs very close to the dump site and flows most of the time. Leakage from the waste trenches will flow toward this stream. A well on an adjoining parcel of land owned by Tom Svatos is just three hundred sixty-six feet away from the dump site. Individuals who own the adjoining land plan to use water from these sources for

domestic purposes, including human consumption. These persons, including the Plaintiffs' members, are legitimately concerned about the potential for pollution of these waters.

XVII.

The proposed dump site has a discernible potential for a landslide or "slumping" as a result of an imbalance of geologic forces. The District's experts have conceded that the soils at the proposed dump site could be unstable. The Defendants had a poorly performed slope stability examination, which inadequately stated that geologic instability would not be a problem.

XVIII.

The Defendant did not address methane gas production or control in its permit application. The Defendant has no clue about how much methane gas the landfill will generate. The proposed design does not call for any methane gas-collection system. Monitoring for methane gas on the boundaries of the site, as proposed, is inadequate because it will not detect dangerous levels of concentrated gas.

XIX.

The risk of contaminating underground aquifers is magnified in this case. The subsurface soil in the area consists of glacial till, primarily sandy clay. Test borings reveal subsurface sand and gravel, porous "lenses", near the proposed waste trenches. There is no way to predict

where or how extensive these lenses are without drilling additional holes across the site. These two wells were drilled to analyze the soils. These two wells were drilled in an area adjacent to the actual trench sites – not where the actual waste is proposed to be located. Once the landfill is constructed, if leachate escapes through undetected sand or gravel lenses, there is really no feasible way to correct the problem.

XX.

The proposed landfill is not environmentally sound and not in the public interest. The District conducted no meaningful examination of the proposed site, nor of any other land within the boundaries of its county members. The District conducted only limited analysis of the chosen site. The tests that were conducted revealed that the site is a potential environmental disaster waiting to happen. Gravel and sand lenses permeate the subsurface. The site is possibly unstable. The proposed site is very near surface water that adjoining land owners intend to use for human consumption. Furthermore, the proposed design incorporates minimal safeguards and admittedly will allow leachate, including life threatening chemicals, to escape the waste cells. The monitoring wells that the District proposes will not detect escaping leachate unless by chance, they happen to be placed in one of the gravel or sand lenses through which the leachate migrates.

XXI.

Further forecasts for the District (then, "Association"), say that it is possible that the District's proposed

dump will receive garbage from outside the four-county area. The District further projects that approximately fifteen thousand, six hundred tons of waste per year will fill the trenches, although it could accept up to twenty-five thousand tons per year, under the proposed permit in issue.

XXII.

The District has plans to accept "special waste", including asbestos. It is unknown as to what chemicals may be found in the leachate generated by the waste. The leachate could include chemicals that cause birth defects and cancer, according to State Department of Environment and National Resources engineers.

XXIII.

Hazardous, obnoxious waste and residue which would be present because of the dump, will cause immediate and irreparable harm to the Plaintiffs and their property. The long term future effects, both known and unknown, will undoubtedly impact the entirety of the physical area as well as the nearby property and population base. This population base clearly includes the Tribe and its individual members.

XXIV.

Persons living next to the proposed landfill site area, including Yankton Sioux Tribal members, are adamantly opposed to it. The Yankton Sioux Tribe is also adamantly

opposed to the proposed landfill, its design, and its location.

XXV.

The Tribe's interest in preserving the environment and natural resources of its ancestral lands is not to be easily disregarded. An Indian tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe.

XXVI.

The proposed landfill site is designed to be constructed on the former ancestral lands of the Yankton Sioux Tribe. Said site is within the original undiminished portion of the Yankton Sioux Reservation. Although the proposed site is presently owned by Kenneth McBride, a fee owner, it was once owned by the Tribe. The Tribe intends to repurchase ancestral and has begun a program designed to further this goal. This parcel would be included.

XXVII.

Southern Missouri Waste Management District plans and intends to begin development and construction of the proposed solid waste landfill at the described site, as evidenced by its preparation and introduction of its letting out of construction contract bids. Upon information

and belief, some kind of construction or pre-construction activities have already begun on the landfill site. The immediacy of the beginning of construction of the landfill, justify the judicial intervention of injunctive and declaratory relief in light of the likely impact the landfill will have upon the land and population located near the proposed site, including the Tribe and its individual members.

XXVIII.

Based upon reasonable knowledge and belief, it is known that the Southern Missouri Waste Management District has set September 29, 1994 as the date for letting out bids for construction contracts for the construction of the landfill at the proposed dump site. (See Exhibit #A, public notice published in Lake Andes Ware [sic] newspaper on Wednesday, September 7, 1994)

XXXI. [sic]

The requested temporary restraining order and preliminary injunction sought, are in reaction to the proposed construction of the landfill at the dump site and the letting of bids to begin construction, such letting out of bids to occur on September 29, 1994. If a temporary restraining order and preliminary injunction relief are not granted, it may likely have the effect of causing additional parties, private construction contractors, which may have to be intervened in a much more complex lawsuit than envisioned at this time. The interests of justice and judicial economy dictate that the preliminary injunctive relief at such time when the letting out of

construction bids are sought, would avoid the possibility or necessity of bringing in further parties.

XXX.

The Yankton Sioux Tribe has never been subject to judicial declaration as to their rights and interests to retain the permitting power over its ancestral lands, which would include the proposed dump site. The eastern counties of the Rosebud Sioux Reservation and the Sisseton-Wahpeton Reservation have been subject to such declarations in the past. The Yankton Sioux Tribe intends to exert it sovereign influence over the situation in each and every regard and to seek such judicial declaration and relief as is just and fair and in the best interests of the general health, safety and welfare of the Tribe and its individual members.

XXXI.

The proposed commencement of construction and operation of the landfill, if maintained, constitute irreparable injury to the individual members of the Yankton Sioux Tribe. The September 29, 1994 letting out of bids for construction contractors by Southern Missouri Waste Management District is the initial stage of operation of the landfill project and will constitute irreparable harm to the individual members of the Yankton Sioux Tribe if the Defendant is allowed to begin construction and operation of the proposed landfill at the proposed site, and in particular, to let out bids to contractors on or after September 29, 1994. (See Exhibit #A).

XXXII.

The Plaintiffs seek both a Preliminary Injunction and a Permanent Injunction. Injunctive relief is sought to force the Defendants to refrain from any further efforts to commence construction on the landfill. This requires that Preliminary Injunctive relief be made available to Plaintiffs to prevent any further commencement of the construction and operation of the landfill at the proposed site. This is necessary to prevent the possible contamination of persons and property as a proximate result of the proposed landfill operation which the Plaintiffs assert has an unsafe design.

Permanent injunctive relief should also be granted for the same reasons as set forth in the Memorandum in Support of Preliminary Injunction and Temporary Restraining Order. Until such time as the United States Environmental Protection Agency changes its policies or expressly approves the permitting power to the Yankton Sioux Tribe over this proposed landfill site or any other within the original Yankton Sioux Reservation, the Defendant should be permanently enjoined from proceeding any further in the letting out of bids on or after September 29, 1994, and the construction and operation of the proposed landfill. Such preliminary and permanent injunctive relief is available under Rule 65 of the Federal Rules of Civil Procedure.

XXXIII.

In view of the Defendant's actual and threatened construction and operation of the proposed landfill and the letting out of bids for construction of September 29,

1994, Plaintiffs' contention that the granting of the permitting power to the State of South Dakota by the Environmental Protection Agency is contrary to federal law and regulation, and thus the permit to Southern Missouri Waste Management District is null and void, there is an actual controversy within the jurisdiction of this Court. Declaratory and injunctive relief will effectively adjudicate the rights of the parties.

WHEREFORE, Plaintiffs pray that:

1. A Preliminary Injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, be granted enjoining the Defendant from any further construction or operation of the proposed landfill at the proposed site, and enjoining the Defendant from letting out construction contract bids to any contractors, which is scheduled to take place on September 29, 1994.

2. A Permanent Injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, be granted enjoining the Defendant from any further construction or operation of the proposed landfill at the proposed site, or from letting out any bid to contracts or after September 29, 1994, until such time as the Defendants have fully complied with all applicable provisions of the United States Constitution, federal law and federal regulations, including the required provisions for obtaining permitting authority under the Resource and Conservation Recovery Act.

3. A decree of declaratory judgment be entered by the Court, pursuant to 28 U.S.C. § 2201 *et. seq.* specifying to Defendant that:

a. Defendant did not properly follow the requirements of 42 U.S.C. § 6924 *et. seq.* when it sought application for ~~a~~ permit to construct and operate a solid waste landfill facility on the proposed site, and in particular that the permit granted by the State of South Dakota and tentatively approved by the United States Environmental Protection Agency is invalid and contrary to federal law and regulation.

b. Defendant did not comply with the necessary safety requirements and analysis in order to adequately assure the protection of the general health, safety and welfare of the Plaintiff and its individual members and others, from the foreseeable harmful effects of the hazardous and obnoxious dangers presented by the proposed landfill.

c. Any other decree of declaratory judgment by the Court deemed just, proper and necessary based upon the pleadings, facts, law and evidence.

4. The Court make awards of costs, disbursements and attorney fees to the Plaintiffs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et. seq.*, and other applicable authority.

5. The Court provide such other and further relief as it may deem necessary and proper.

Dated this 28th day of September, 1994.

ABOUREZK LAW OFFICES, P.C.
Attorney for Yankton Sioux Tribe
Post Office Box 9460
Suite 101, Rushmore Building
2040 West Main Street
Rapid City, South Dakota 57709
(605) 342-0097
By: /s/ Robin L. Zephier

VERFICATION [sic]

State of South Dakota)
) §§
County of Pennington)

Robin L. Zephier, being first duly sworn, deposes and states that he has read the foregoing document and knows the contents thereof, and that the same is true of his own belief, except as to matters herein stated on information and belief, and as to those matters he believes them to be true.

/s/ Robin L. Zephier
Robin L. Zephier

Subscribed and sworn to before me the 28th day of September, 1994.

/s/ _____
Notary Public, South Dakota

My Commission Expires: 4/14/2000
(SEAL)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Southern Division

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,	)	FILE NO. 94-4217
Plaintiffs,	)	ANSWER BY SOUTHERN MISSOURI RECYCLING AND WASTE MANAGEMENT DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH DAKOTA
vs.	)	
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation.	)	
Defendant.	)	

COMES NOW, Southern Missouri Recycling and Waste Management District, a Political Subdivision of the State of South Dakota, formerly known as Southern Missouri Waste Management Association, Inc., a South Dakota Corporation, hereinafter referred to as "District," erroneously referred to in Plaintiff's verified complaint as Southern Missouri Waste Management District, a non-profit corporation, by and through it's [sic] legal counsel, Kenneth W. Cotton, Wipf & Cotton, Attorneys at Law, Wagner, South Dakota and respectfully sets forth the following answer to Plaintiff's complaint, to-wit:

I.

That Plaintiff's complaint fails to state a claim upon which relief can be granted.

II.

That Defendant denies each and every matter, thing, and allegation contained in Plaintiff's complaint except as hereinafter specifically admitted, modified, or clarified; and as to those matters denied, Defendant puts Plaintiff to its strict proof thereon.

III.

That due to the length and content of Plaintiff's verified complaint, Defendant hereby responds to each numbered paragraph therein, as follows:

Plaintiff's paragraph I: Defendant admits these citations exist and is without sufficient information or knowledge from Plaintiff's pleadings with which to either admit or deny that the citations included in this paragraph have relevance to the issue at hand; also, that Defendant states the 1892 Agreement with the Yankton Sioux or Dakota Indians in South Dakota was ratified in 1894, not 1994.

Plaintiff's paragraph II: Defendant admits this paragraph.

Plaintiff's paragraph III: Defendant admits this paragraph.

Plaintiff's paragraph IV: The first sentence is not an allegation which requires a response in Defendant's answer; Defendant admits that the

South Dakota Board of Minerals & Environment granted a permit to operate a Subtitle D, Category 2B landfill facility to Southern Missouri Waste Management Association, Inc., a South Dakota non-profit corporation, on December 23, 1993, after an extensive three and a half day hearing before the said South Dakota Board of Minerals and Environment which was held in Pierre, South Dakota, on December 8, 9, 10 & 20, 1993; that the Environmental Protection Agency of the United States has delegated permitting authority to South Dakota over all lands except "former reservation lands" of the Yankton Reservation, and other lands in South Dakota, and that on April 1, 1994, EPA made a tentative decision to grant unto South Dakota the authority to administer the National Solid Waste Program on "former reservation lands" on the Yankton Reservation and other lands, which tentative decision is the most recent statement by the Environmental Protection Agency of the United States on the matter of who is best suited to administer the National Solid Waste Program in South Dakota; that the EPA of the United States does not have permit authority and does not issue permits to operate Subtitle D landfills; that the Plaintiff's have not been delegated authority by the EPA of the United States to administer the National Solid Waste Program; and that if South Dakota does not have authority to issue a permit to District, then, and in that event, no permit is needed by the District, to construct, operate, and maintain a Regional Solid Waste Disposal Facility, as long as same meets all appropriate State and Federal regulation.

Plaintiff's Paragraph V: Defendant admits Plaintiff is a Federally recognized Tribe of Indians duly recognized by the United States Secretary of Interior; Defendant admits that the Tribe's principal place of business is in Marty, Charles Mix County, South Dakota; Defendant is without sufficient information to admit or deny that the "individual members" referred to in this lawsuit are all enrolled members of the Yankton Sioux Tribe; Defendant denies "hazardous waste" is an issue in this matter; Defendant is without sufficient information to admit or deny that Chairman Darrell E. Drapeau is an enrolled member of the Yankton Sioux Tribe.

Plaintiff's Paragraph VI: Defendant hereby admits the first sentence; admits the second sentence and modifies said sentence to include 21 southeastern South Dakota communities which are also members of the District, as was the Plaintiff Yankton Sioux Tribe, up until July, 1993, when leadership of the Tribe changed and the Tribe withdrew from participation in the District; that the proposed *landfill site* is located one and half miles west of Lake Andes, SD, on property owned legally owned by Kenneth McBride, subject to an existing contract for deed running in favor of the Southern Missouri Recycling and Waste Management District, duly recorded in the office of the Register of Deeds in Charles Mix County, South Dakota, on June 24, 1994, in Book 108, pages 1051-1053.

Plaintiff's Paragraph VII: Defendant admits with the exception that the correct legal description of the property upon which the proposed landfill will be located is as follows:

Plaintiff's Paragraph VIII: Defendant admits and clarifies that the District has purchased the entire 80 acre tract above described from Kenneth McBride, and that the west 50 acres of said tract will be used for municipal solid waste disposal, and that the east 30 acres will be used for administration and operational areas of the facility and will not be used for solid waste disposal.

Plaintiff's Paragraph IX: Defendant denies paragraph IX as being inaccurate and hereby puts Plaintiff's there [sic] strict proof thereon.

Plaintiff's Paragraph X: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XI: Defendant denies and puts Plaintiff to its strict proof thereon, and further Defendant specifically denies that the land upon which the proposed landfill is to be placed is subject to any other jurisdiction other than that of the State of South Dakota.

Plaintiff's Paragraph XII: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XIII: Defendant denies the first sentence; denies the second sentence as to visual inspection alone, as there were other factors considered in selecting the proposed landfill site; Defendant admits that Bon Homme and Gregory counties, South Dakota, were not members of the association when the proposed sight [sic] was selected; and Defendant specifically denies the fourth sentence of this paragraph and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XIV: Defendant admits that after the site was selected for the proposed landfill facility that a preliminary site characterization study was submitted to the South Dakota Department of Environment & Natural Resources in August, 1992, that additional information was requested by the Department, and that later a final site characterization study was submitted to the Department.

Plaintiff's Paragraph XV: Defendant admits the first sentence of this paragraph; admits the second sentence of this paragraph, and further modifies to state that an Environmental Statement is not required on a landfill project of this size; Defendant denies the third sentence of this paragraph; Defendant denies the South Dakota Department of Environment & Natural Resources published notice of approval of landfill site on 12-23-93, and clarifies this position to state that the 12-23-93 date was the date that the South Dakota Board of Minerals and Environment granted to the District a permit to operate a regional landfill facility, after the extensive contested case hearing which was held in Pierre, South Dakota, in early December of 1993, and that actual notice of the intent to approve the application was made far earlier by the Department of Environment & Natural Resources for South Dakota, and from that approval came the contested case hearing before the Board of Minerals & Environment in early December of 1993, wherein all of the issues raised in this verified complaint of Plaintiff's were fully, completely, and totally litigated, with Plaintiff's participating every step of the way.

Plaintiff's Paragraph XVI: Defendant admits that the proposed landfill is within 1000 feet of known streams, springs, wells, and stock dams, however, Defendant states by way of clarification that none of these streams, wells, or stock dams are classified for fish life propagation, and consequently violate no state or federal regulation, or are in conformity with same, and therefore have no bearing upon the issue at hand whatsoever; Defendant further states that all of this paragraph was completely and totally litigated in the extensive contested case hearing held before the South Dakota Board of Minerals & Environment in December of 1993, with Plaintiff's voluntarily appearing therein throughout the duration of all proceeding; that Defendant denies the remainder of this paragraph and puts Plaintiff to is strict proof thereon.

Plaintiff's Paragraph XVII: Defendant denies this paragraph as being taken completely out of context, and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XVIII: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XIX: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XX: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXI: Defendant admits this paragraph.

Plaintiff's Paragraph XXII: Defendant admits this paragraph.

Plaintiff's Paragraph XXIII: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXIV: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXV: Defendant specifically denies that the Yankton Sioux Tribe of Indians has any jurisdiction over District's lands or this proposed landfill facility.

Plaintiff's Paragraph XXVI: Defendants [sic] admit [sic] that its land is in the exterior boundaries of the Yankton Sioux Reservation; further, Defendants [sic] specifically deny [sic] that the old exterior boundaries of the Yankton Sioux Reservation have any further utility; that Defendant is without sufficient information with which to admit or deny that Plaintiff Yankton Sioux Tribe has commenced a program to repurchase former "ancestral" lands, or that this parcel owned by the District would be included on that list.

Plaintiff's Paragraph XXVII: Defendant admits the first two sentences; Defendant denies the last sentence.

Plaintiff's Paragraph XXVIII: Defendant admits this paragraph (Note: Plaintiff's complaint jumped from Paragraph XXVIII to XXXI on page 11 and will be answered accordingly)

Plaintiff's Paragraph XX[illegible] on page 11 of Complaint: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXX: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXXI on page 12: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXXII: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

Plaintiff's Paragraph XXXIII: Defendant denies this paragraph in whole and puts Plaintiff to its strict proof thereon.

IV.

The Plaintiff's actions should be dismissed for failure to join an indispensable party, i.e. the State of South Dakota, in as much as the State of South Dakota has previously issued a permit to Defendant to construct, operate, and maintain a subtitle D Category II B solid waste disposal facility, part of Plaintiff's Complaint being that the State of South Dakota does not have jurisdiction over the proposed landfill site and consequently cannot issue this permit, therefore the State of South Dakota should be and is, an indispensable party to this lawsuit.

V.

The Plaintiff's action should be dismissed based upon the doctrine of Abstention, in that Plaintiff selected the forum in which they wished to contest the issuing of the South Dakota permit to construct, operate, and maintain the Defendant's proposed solid waste facility, and

Plaintiff did, in fact, actively participate for more than one year in the South Dakota Administrative and Judicial proceedings before the South Dakota Board of Minerals and Environment, and the 6th Judicial Circuit Court in and for Hughes County, South Dakota, as appears more fully by the hereto attached Findings of Fact, Conclusions of Law, and Order of the Board of Minerals and Environment, and the Order Affirming the Prior Action the Board of Minerals and Environment issued by the 6th Judicial Circuit in and for Hughes County, South Dakota, said attachments being marked Exhibit A, B, & C, respectively, and made a part hereof as fully and completely as if set forth verbatim herein; and that whether or not the State of South Dakota has jurisdiction to issue the said permit to Defendant is a question of state law best administered by the South Dakota administrative agencies and Courts, without interference or needless conflict created by a separate Federal Court action. Moreover, it is not in the best interest of judicial economy of either the State administrative or Court system, nor the Federal Court system, to allow an issue that has been fully resolved by the State administrative board and Court system to then be brought into the Federal system alleging the same facts, thereby requiring Defendant to again go through the extraordinary defense of again defending something that it has already defended successfully on two prior occasions.

VI.

That Plaintiff's actions should be dismissed for failure on Plaintiff's part to fully exhaust its State of South Dakota administrative and judicial remedies, despite

Plaintiff's participation in said proceedings for more than one year prior to the filing of this lawsuit.

VII.

That by way of affirmative defense, Defendant specifically alleges the defenses of laches, estoppel, waiver, and res judicata are applicable in this case, based upon the fact that Plaintiff has actively been contesting the citing [sic] and design of the proposed landfill facility in controversy for more than one year prior to the commencement of this action, that Plaintiff has lost in every proceeding to date in its attempt to stop the proposed landfill facility, and based upon their prior participation for more than one year to stop the facility they have waived their rights to go into Federal Court on essentially the same issue, and are engaged in nothing more than forum shopping if the Court allows them to proceed in Federal Court; that Defendant has invested well over $250,000.00 as well as its time and labor to date in citing [sic], designing, and defending the proposed landfill facility against attack by those opposed to it, including this Plaintiff; that Plaintiff knows, and has known through out [sic] this period, that Defendant must have said landfill facility operational by not later October 9, 1995, in order to meet strict Federal and State solid waste disposal mandates or subject its four South Dakota counties and 21 municipalities members fines and penalties, which total in their maximum $250,000.00 per day for every day after October 9, 1995, that said facility does not meet the Federal mandate; that Plaintiff submission and participation in the State of South Dakota proceedings the last one year has been relied upon by Defendant, to its

detriment if Plaintiff is now allowed to proceed on this Federal Court action, and Plaintiff should be estopped from maintaining this Federal Court action; and further, based upon Plaintiff's substantial participation State administrative and judicial facilities previously had over the last one year, as appears more fully by Exhibits A, B, & C attached hereto, the Plaintiff [sic] are guilty of latches and should further be prevented from bringing their Federal Court action at this late date based upon the theory of latches; further, that the Plaintiff brought this same suit for declaratory relief against the State of South Dakota on or about February 14, 1994, and proceeded to drop said proceedings just prior to the State of South Dakota answering the Complaint, for reasons unknown to Defendant.

VIII.

That Plaintiff's action in this matter is vexatious, frivolous, and is meant only to delay and impede the Defendant from complying with the Federal mandate that it is required to comply with; that Plaintiff's action is malicious and capricious in nature; and that as a result thereof Defendant is entitled to sanction and penalties from Plaintiff in an amount to be determined later by this Court.

IX.

That Defendant verily believes that the "Yankton Sioux Reservation" was disestablished by the Treaty of 1892, and subsequent State and Federal legislation and case law and that the former boundaries of the Yankton

Reservation established in the treaty of 1858 were likewise disestablished and are of no longer any force or effect on fee land in southern Charles Mix County, South Dakota, such as the land upon which the proposed landfill facility to be built upon.

X.

That Defendant specifically states that it verily believes the State of South Dakota has at the very minimum concurrent jurisdiction over the land upon which the proposed landfill facility is to be constructed and operated upon; that in the event the State of South Dakota does not have the requisite jurisdiction then the Defendant does not need any permit, as the Environmental Protection Agency does not have the administrative machinery nor does issue any permits to anybody to operate solid waste disposal facility, and that Plaintiff has not been delegated and given the permitting authority to issue said permits by the Environmental Protection Agency.

WHEREFORE, Defendant respectfully prays that the Court enter relief in this matter as follows:

1. That Plaintiff's action be dismissed in total and that Plaintiff recover nothing thereon.

2. That Defendant recover sanctions against Plaintiff for its vexatious, harassing, capricious, frivolous, and dilatory nature of this lawsuit.

3. That Defendant be awarded its costs and disbursements on this action, including reasonable attorney's fees.

4. That Plaintiff request and Motion for Temporary Restraining Order and Temporary and Permanent Injunction be forthwith and summarily dismissed, with prejudice.

5. That Defendant be awarded such other and further relief as the Court may deem just and equitable in the premises.

Dated this 18th day of October, 1994.

/s/ Kenneth W. Cotton

Kenneth W. Cotton
Wipf & Cotton
107 S. Main
Wagner, SD 57380
Phone: 605-384-5471
Attorney for Defendant –
Southern Missouri Recycling
and Waste Management District,
A political sub-division of
the State of South Dakota.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the Answer by Southern Missouri Recycling and Waste Management District, a political sub-division of the State of South Dakota, was duly mailed by First Class mail with postage prepaid thereon, to Plaintiff's attorney, at his last known address, to-wit: Mr. Robin L. Zephier, of Abourezk Law Offices, PC, PO Box 9460, Rapid City, South Dakota 57709 post office, said

mailing being made by the undersigned on October 19, 1994.

/s/ Kenneth W. Cotton
Kenneth W. Cotton
Wipf & Cotton
107 S. Main
Wagner, SD 57380
Phone: 605-384-5471
Attorney for Defendant

Exhibit A

STATE OF SOUTH DAKOTA

BEFORE THE BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF A PROPOSED MUNICIPAL SOLID WASTE PERMIT TO SOUTHERN MISSOURI WASTE MANAGEMENT ASSOCIATION	) FINDINGS OF FACT AND) CONCLUSIONS OF LAW

The above entitled matter having come on regularly for hearing before the South Dakota Board of Minerals and Environment (the Board) at the Matthews Training Center, at 523 E. Capitol, Pierre, Hughes County, South Dakota, at 10:00 o'clock A.M., on Wednesday, December 8, 1993, and continuing on December 9 and 10, 1993, at said location, the Honorable Lee M. McCahren, attorney at law and member of the Board, presiding as the appointed and acting Hearing Examiner for the Board; the following board members being present for the said hearing: Chairman Richard C. Sweetman, Robert E.

Hayes, Vivian Pappel, Linda Hilde, Craig Grotenhouse, Grace Petersen, Mary Wiese, and Wilbert Blumhardt; said contested hearing having come on pursuant to the Petition For a Contested Case Hearing duly filed herein by H. Allen and Carol M. McBride, contesting the proposed issuance of a solid waste permit by the South Dakota Department of Environment and Natural Resources (Department) to the Southern Missouri Waste Management Association (Association), and the Petition for Contested Case-Petition to Intervene of Donald Pay; Intervenor Petition of Ihanktunwan Game, Fish and Wildlife; Intervenor Yankton Sioux Tribe; and Intervenor Voices Organized to Save the Environment (VOTE); the Association being represented by Kenneth W. Cotton, of Wipf & Cotton, Attorneys-At-Law, Wagner, South Dakota 57380, the State of South Dakota being represented by assistant attorney general Charles D. McGuigan and Diane Best; H. Allen and Carol M. McBride appearing Pro Se; Donald Pay appearing Pro Se; Ihanktunwan Game Fish and Wildlife and Yankton Sioux Tribe being represented by James G. Abourezk, of Abourezk Law Offices, Rapid City, South Dakota; and VOTE being represented by legal counsel, Matthew J. Chachere, of New York, New York; Lee McCahran as Hearing Examiner having previously ruled on prehearing matters on September 27, 1993, October 15, 1993, and the pre-hearing Conference and Motion Hearing of December 3, 1993; Discovery, including Depositions of Experts and Requests for production of documents having been taken by the parties hereto; that prior to the formal presentation of evidence and testimony to the Board, individuals were allowed to make informal statements of support or objections to the Board

regarding the application by SMWMA, Inc., for a permit to operate a regional solid waste disposal site; that testifying for the Association were Terry Wotterstorff, Kenneth Kredit, Bruce Bakken, Brian Bernhard, Vernon Arens, John Childs, Bryan Maas, Bob Foster, and Nathan Hunke; that testifying for Department was Terry Wolterstorff and Derric Iles; that testifying for the Yankton Sioux Tribe and Ihanktunwan were Dr. Henry Mott, Dr. Perry Rahn, Tribal Chairman Darrell Drapeau, and tribal member Vince Two Eagles; that VOTE put on no witnesses; that Donald Pay, Pro Se, put on no witnesses and did not attend the hearing on December 10, 1993; that H. Allen McBride and Carol M. McBride, Pro Se, testified themselves but did not put on witnesses; that there were introduced 48 separate evidentiary exhibits by the parties hereto, including the Complete Site Characterization Study and Permit Application, consisting of more than one hundred (100) pages of technical reports, correspondence, studies and documents; the Board having heard the testimony and considered all evidence and exhibits presented at said hearings, and being fully knowledgeable in the records, files and premises herein, and based upon the entire original record in this matter, and upon good cause, now makes the following:

FINDINGS OF FACT

I.

That the Board has jurisdiction of these proceedings pursuant to SDCL § 1-26 and SDCL § 34A-6, and acts amendatory thereto, as well as pursuant to ARSD § 74:09 and 74:27, et. seq., and amendments thereto.

II.

That Association, a South Dakota Non-Profit Corporation was granted Corporate status by the South Dakota Secretary of State on February 26, 1992, with the stated purpose of developing, constructing and maintaining a regional landfill.

III.

That initially Association membership included Charles Mix and Douglas County, the communities located therein, and the Yankton Sioux Tribe, who sent a delegate to each Association meeting through the 7-20-93 meeting; that all members have executed joint powers agreements to become part of the Association, with the exception of the Yankton Sioux Tribe who never executed the Joint Powers Agreement. That Association meets monthly and has encouraged its members to publish minutes and next meeting date in their localities – many of which did.

IV.

That Association engaged the services of B & E Engineering of Yankton, South Dakota, to aid in the locating, permitting, and construction of a regional landfill facility. B & E Engineering was hired in part because it had experience in designing the Vermillion, SD, Subtitle D landfill.

V.

That Association also availed itself of help from Planning and Development District III, of Yankton, South Dakota, to aid it in developing a regional landfill; that District III is in the process of preparing a Source Reduction and Recycling Plan for the Association; that Association realizes its responsibility toward recycling and will be actively encouraging its members to recycle locally as Bon Homme County currently does.

VI.

That Association selected a "Site Selection Committee" from its membership in order to located [sic] a suitable site for the location of a regional landfill.

VII.

That Association published notice in local newspapers soliciting available parcels of land to locate a regional landfill on, that these publications were made in Charles Mix and Douglas County only, as those were the only two counties comprising the Association at that time. That no responses to this advertisement was [sic] received by the Association.

VIII.

That the Site Selection Committee of Association thereupon actively went out and looked for potentially suitable sites upon which to build a regional landfill.

IX.

That several potential sites were looked at by Site Selection Committee using site criteria given it by District III and B & E Engineering and those sites were then turned over to B & E Engineering for further review. That Several Sites were excluded for various reasons, including being too close to the Lake Andes Airport, containing wetlands, or overlaying shallow aquifers.

X.

The Site Selection Committee was looking for a potential site that met EPA and SD guidelines for the permitting of a landfill and also that site would be somewhat centered in the two county area (i.e., Charles Mix and Douglas), in order to mitigate members hauling expense to the landfill.

XI.

The Site Selection Committee recommended three possible sites to Association on June 23, 1992; and that the Association selected the S1/2 of the NW1/4 of Section 6, Township 96 North, Range 65 West of the 5th P.M., Charles Mix County, South Dakota, as the proposed site of the Association's landfill, this site known as the "McBride" site. That said site is approximately 1 1/2 to 2 miles west of Lake Andes, Charles Mix County, South Dakota.

XII.

That Association obtained an option to purchase said real property from Kenneth McBride on July 9, 1992, contingent on the site being permitted for a solid waste landfill.

XIII.

That B & E Engineering began gathering data on the proposed site in July, 1992, which included soil borings, test wells, and compliance with South Dakota Administrative rules, all of which culminated in a Site Characterization Study for Solid Waste Landfill being submitted on behalf of Association by B & E Engineering to Department on or about January 20, 1993.

XIV.

That Department had additional questions regarding the proposed site and B & E Engineering worked with Department on behalf of the Association to accomplish additional engineering data on the proposed site which culminated in the final Site Characterization Study for Solid Waste Landfill being submitted to Department on or about July 29, 1993, which said Site Characterization Study is included herein by reference as fully and completely as if included verbatim herein.

XV.

That Association applied to Department for a Solid Waste Permit on August 3, 1993; that said Permit application is in good and proper form and said Permit application is included herein by reference as fully and completely as if included verbatim herein.

XVI.

That Department conducted a thorough completeness examination of Association's Permit application and found the Permit application to be in conformity with all SD Laws and Regulations and that said Permit application is procedurally correct.

XVII.

That Department conducted a technical review of said permit application and found the application to be technically sound and in compliance with all SD Laws and Regulations; and that the Permit application addressed each of the matters required under SDCL § 34A-6 and ARSD § 74:27, and any acts amendatory thereto.

XVIII.

That Department recommended the issuance of a Permit to Construct and operate a municipal Solid Waste Landfill Facility under the South Dakota Solid Waste Program, Facility Type II B, conditioned on four (4) general requirements, five (5) design and construction requirements, three (3) monitoring requirements, nine (9)

operational requirements, three (3) record keeping and reporting requirements, and two (2) financial assurance requirements, which are attached to the proposed Permit in Department Exhibit #1 and which is incorporated herein by reference thereto.

XIX.

That Department published a recommendation of approval of said Permit application on August 12, 1993, in the Lake Andes Wave, a legal publication headquartered in Lake Andes, Charles Mix County, South Dakota.

XX.

That contestants and Intervenors herein timely contested and intervened in this matter.

XXI.

That Department sent proper and timely notices of the hearing before the Board of Minerals & Environment to all parties herein and to all persons appearing on the Department's official mailing list.

XXII.

That there is substantial public support for the granting of Association's Permit application as evidenced by the verbal support and resolutions of Charles Mix, Douglas, Bon Homme and Gregory Counties, and the cities of Tabor, Springfield, Scotland, Delmont, Wagner, Avon, Burke, Bonesteel, Ravinia, Platte, Lake Andes, Tyndall,

Fairfax, and state representatives Albert Kocer, Frank Kloucek, and Ed Van Gerpen; and further that contestants and intervenors stipulated at the commencement of the hearing that there was public support for this landfill; and based upon the public comment received at the public hearing conducted by the Department in Lake Andes, South Dakota, on July 8, 1993; and further that no citizens testified in opposition to association being granted a Solid Waste Permit at the public comment portion of the hearing.

XXIII.

That Bryan Maas, of Maas & Associates, a real estate appraising firm, from Parkston, SD, testified on behalf of Association that the proposed landfill would not result in lower or reduced property values for surrounding property owners based on his study of property values surrounding the Runge landfill at Sioux Falls, SD, the nearest Subtitle D landfill to the proposed Association Landfill, and his review of property values around the existing town dumps of Platte, Wagner and Lake Andes, which said testimony was unrefuted by Contestants and intervenors; and the Board finds the location of said landfill will not adversely impact surrounding property values.

XXIV.

That Dr. Perry Rahn expressed his concerns as an expert witness for the Yankton Sioux Tribe, regarding the proposed site, which included the possibility of (1) a major aquifer lying beneath the proposed site, (2) not

enough test wells being drilled, (3) possible presence of continuous sand or gravel lenses under the proposed site and (4) possible fractures, fissures or lineaments leading vertically to the Codell aquifer are unfounded and rejected by the Board based on Derric Iles testimony that the Kumes/Hedges Study of the Geddes Aquifer clearly shows that aquifer Northeast of proposed site and that the likelihood of finding a major aquifer under proposed site was minimal; that Dr. Rahn himself testified Derric Iles was an expert in this area; further, that John Childs of B & E Engineering stereoscopically examined the SD Geological Survey aerial photographs of the proposed site and found no evidence of fractures, fissures or lineaments, which Dr. Rahn testified would raise his comfort level with proposed site; further, that the lineament map admitted in evidence during the testimony of Derric Iles shows no known lineaments traversing the proposed site; further, that it is economically impossible for the Association to place 871 test wells or borings on the proposed 50 acre site, and based upon Bob Foster and Nathan Hunke's testimony, the number of test wells and borings are adequate to make a reasonable engineering determination as to what will be found on proposed site when construction begins; that Derric Iles testified, and the Board finds that because sand and gravel was found in some wells and borings and not in wells and borings adjacent, the sand and gravel lenses on proposed site are likely discontinuous and can well be remedied in the Construction Assurance Plan; and that the Nevzel theory upon which Dr. Rahn bases his concern for vertical cracks and fissures in the Pierre shale above the Codell Aquifer has been admitted to be in error by Nevzel himself.

XXV.

That Dr. Henry Mott's concerns as an expert witness for the Yankton Sioux Tribe, which included (1) no methane gas collection system, (2) inadequacy of the proposed liner and leachate collection system, and (3) ground water mounding, are unfounded and rejected by the Board based upon Dr. Mott's testimony that a methane gas collection system is not required by SD Regulations; that technology exists to deal with Methane gas accumulation at a later date if quarterly monitoring as proposed by the Association finds methane to be an explosive or human health hazard; that Dr. Mott testified that he did not know if either the Sioux Falls or Rapid City landfills have methane gas collection systems; that Dr. Mott has never designed or constructed a Subtitle D landfill; that Bob Foster of Great Plains Engineering, as soil consulting engineer to B & E Engineering, testified the soil at the proposed site can, in his opinion, be compacted to the required 1 x 10(-7) cm/sec. rate at slightly over 96% compaction; that glacial tills in Vermillion, SD and proposed site are similar and that B & E was able to achieve the same compaction results in the Vermillion field as the lab and he believes B & E will achieve similar results as to compaction of the liner on proposed site; that Nathan Hunke is an expert in hydrogeology and that he has previous experience working on seven (7) other landfills and hydrological/geological problems associated therewith and feels the compaction of 1 x 10(-7) cm/sec. can easily be achieved on proposed site, that the underlying glacial till provides a very impermeable layer under the liner to further protect the environment, that the 1 x

10(-3) cm/sec. permeability of the leachate collection system will cause nearly all leachate to enter collection system to be routed to collection point or be circulated over existing cell; and that he does not believe ground water mounding will be a problem at the proposed site. That Nathan Hunke also testified that based on his experience the number of test wells and borings were adequate to analyze the proposed site's substrata.

XXVI.

That the double liner – double leachate collection system proposed by Dr. Mott is not required by South Dakota solid waste regulations.

XXVII.

That approximately 16 small town unregulated dumps can be closed if the proposed landfill is permitted, thus resulting in substantial benefit to the public and resulting in increased protection for the environment.

XXVIII.

That the proposed facility will not cause significant adverse affect [sic] on wildlife, recreation, aesthetic value of the area, or threatened or endangered species; is not located within 1000' of bodies of water classified for fish life propagation; is not located within an area where leachate can potentially contaminate ground water; is not located within the 100 year flood plain; and is not visible or within 1000' of a public park and is in an area that does not constitute a potential safety hazard to the public.

XXIX.

That Association has not violated any of the conditions for denial set forth in SDCL § 34A-6-1.3, and is a fit and proper entity to which a Solid Waste Disposal Permit may be issued.

XXX.

That Association has provided all necessary information and evidence to Department and Board to comply with all applicable laws and regulations in order for the Board to make a decision regarding Association's Permit Application.

XXXI.

That Yankton Sioux Tribal Chairman Darrell Drapeau testified the Tribe has two reasons for contesting the issuance of the requested Solid Waste Disposal Permit to the Association. First, that the Tribe felt the site was inappropriate and Second, that the Tribe felt the design was flawed based on their experts [sic] statements and reports, which the Board has previously rejected. The Tribal Chairman testified that the McBride site was not Tribal land, that the Tribe may someday want to buy back the McBride site, that he didn't know if Subtitle D regulations were applicable to Indian Tribes.

XXXII.

That locating, permitting, constructing, and operating a subtitle D landfill involves a series of steps; that permitting the facility comes before the final design of

facility is completed; that most all of the Contestants-Intervenors objections to proposed facility are items associated with Final design, not site suitability.

XXXIII.

That the proposed groundwater monitoring program is not yet complete, however, the ground water monitoring program is provided for in Permit Condition No. 3.1.

XXXIV.

That the permit conditions specifically address the design of the facility in order to protect groundwater, surface water, and the environment.

XXXV.

That for all the reasons set forth in these Findings, the entire record in this matter, all evidence and testimony included therein, the Board finds that the proposed site is suitable for disposal of Municipal Solid Waste, is appropriate for the planned use, and is an environmentally safe site.

XXXVI.

That the Board finds that with regard to all the issues and concerns raised by the Contestants-Intervenors herein and their witnesses regarding the proposed facility, in each case those issues and concerns have been answered to the satisfaction of the Board by witnesses on behalf of Association or Department, and the entire

record, including all exhibits, in this case; further, that all other objections to the granting of the Solid Waste Disposal Permit to Association are without merit and denied by the Board.

XXXVII.

That the Solid Waste Disposal Permit will be subject to the permit conditions attached thereto and incorporated herein by reference.

Now, and from the foregoing FINDINGS OF FACT the Board makes the following:

CONCLUSIONS OF LAW

I.

That the Board has jurisdiction of the parties and subject matter of these proceedings pursuant to SDCL § 1-26 and SDCL § 34A-6, as well as pursuant to ARSD § 74:09 and 74:27, et. seq., and any acts amendatory thereto.

II.

That Contestants, Intervenors, and People of South Dakota have been afforded due process in this hearing.

III.

That Association is a SD Non-Profit Corporation, is comprised of member governments duly exercising mutual joint powers agreements; that Association has not

violated SDCL § 34A-6-1.3 and is therefore eligible to receive a Solid Waste Disposal Permit.

IV.

That Association's application for a Solid Waste Disposal Permit is complete, contains all items required by, and meets the requirements of, all applicable laws and regulations, both procedural and substantive, for the issuance of a Solid Waste Disposal Permit.

V.

That the proposed facility complies fully with all applicable requirements of SDCL § 34A-6 and ARSD § 74:27, inclusive, and otherwise fulfills all requirements for the issuance of a Solid Waste Disposal Permit.

VI.

Association's proposed facility, if operated in accordance with the submitted application and the permit conditions imposed by the Board, will not cause adverse impacts to the environment or Natural resources of South Dakota.

VII.

The proposed facility and the granting of a Solid Waste Disposal Permit to Association for the proposed site is in the public interest.

Dated this 23rd day of December, 1993.

/s/ Lee M. McCahren
Lee M. McCahren, Hearing Officer
SD Board of Minerals and Environment

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Amended Findings of Fact and Conclusions of Law along with the Order Dismissing Contestant's and Intervenor's Petitions and Authorizing Solid Waste Permit To SMWMA, Inc., has been provided by United States mail, postage paid to each of the following this 22nd day of December, 1993:

H. Allen and Carol M. McBride
Route 2, Box 57
Lake Andes, SD 57356

James G. Abourezk
816 St. Joseph Street
Rapid City, SD 57701

Charles D. McGuigan
Assistant Attorney General
State of South Dakota
500 E. Capitol
Pierre, SD 57501-5070

Bruce Ellison
Attorney at Law
PO Box 2508
Rapid City, SD 57709

Matthew J. Chachere
Center for Constitutional Rights
666 Broadway
New York, NY 10012-2317

Donald Pay
114 E. Philadelphia
No. 3
Rapid City, SD 57701

Dated this the 22nd day of December, 1993.

/s/ Kenneth W. Cotton
Kenneth W. Cotton

Exhibit B

STATE OF SOUTH DAKOTA

BEFORE THE BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF A PROPOSED MUNICIPAL SOLID WASTE PERMIT TO SOUTHERN MISSOURI WASTE MANAGEMENT ASSOCIATION	)))))))	ORDER DISMISSING CONTESTANT'S AND INTERVENOR'S PETITIONS AND AUTHORIZING SOLID WASTE PERMIT TO SMWMA, INC.

The above entitled matter having come on regularly for hearing before the South Dakota Board of Minerals and Environment (the Board) at the Matthews Training Center, at 523 E. Capitol, Pierre, Hughes County, South Dakota, at 10:00 o'clock A.M., on Wednesday, December 8, 1993, and continuing on December 9, 10, and 20, 1993, at said location, the Honorable Lee M [sic] McCahren, attorney at law and member of the Board, presiding as the appointed and acting Hearing Examiner for the Board; said contested hearing having come on pursuant to the Petition For A Contested Case Hearing duly filed herein by H. Allen and Carol M. McBride, contesting the proposed issuance of a solid waste permit by the South Dakota Department of Environment and Natural Resources (Department) to the Southern Missouri Waste Management Association (Association), and the Petition for Contested Case-Petition to Intervene of Donald Pay; Intervenor Petitioner of Ihanktunwan Game, Fish and Wildlife; Intervenor Yankton Sioux Tribe; and Intervenor Voices Organized to Save the Environment (VOTE); the

Association being represented by Kenneth W. Cotton, of Wipf & Cotton, Attorneys-At-Law, Wagner, South Dakota 57380, the State of South Dakota being represented by assistant attorney general Charles D. McGuigan and Diane Best; H. Allen and Carol M. McBride appearing Pro Se; Donald Pay appearing Pro Se; Ihanktunwan Game Fish and Wildlife and Yankton Sioux Tribe being represented by James G. Abourezk, of Abourezk Law Offices, Rapid City, South Dakota; and VOTE being represented by legal counsel, Matthew J. Chachere, of New York, New York; the Board having heard the testimony and considered all evidence and exhibits presented at said hearings, and being fully knowledgeable in the records, files and premises herein, and upon the Findings of Fact and Conclusions of Law duly filed herein, and upon good cause shown; it is hereby,

ORDERED, that the Petition for a Contested Case hearing duly filed herein by H. Allen and Carol M McBride, as well as the Petition to Intervene by Donald Pay; Ihanktunwan Game, Fish and Wildlife; Yankton Sioux Tribe; and Voices to Save the Environment (VOTE), are hereby denied; and it is further,

ORDERED, that proposed issuance of a solid waste permit by Department be ratified and confirmed and a solid waste permit is hereby awarded to SMWMA, Inc., Subject to whatever conditions placed upon same by Department.

Dated this 23rd day of December, 1993.

South Dakota Board of Minerals and Environment

By: /s/ Lee McCahran
Lee McCahran, Hearing Officer
SD Board of Minerals and Environment

EXHIBIT C

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

CIV #94-34

IN THE MATTER OF A PROPOSED MUNICIPAL SOLD [sic] WASTE PERMIT TO SOUTHERN MISSOURI WASTE MANAGEMENT ASSOCIATION, INC.	) ORDER AFFIRMING) BOARD OF MINERALS) AND ENVIRONMENTS) FINDINGS OF FACT) CONCLUSIONS OF LAW,) AND ORDER DISMISSING) CONTESTANTS AND) AUTHORIZING SOLID) WASTE PERMIT TO) SMWMA, INC.

The above entitled matter came on regularly for hearing before the Honorable Steven L. Zinter, Circuit Court Judge in and for the Sixth Judicial Circuit, on the 28th day of September, 1994, at the hour of 2:00 o'clock p.m., at the Hughes County Courthouse, located in the City of Pierre, Hughes County, South Dakota; appellant voices organized to save the environment, hereafter referred to as

"VOTE," appeared in the person of their attorney, Mr. James G. Abourezk, of 816 St. Joseph St., #206, Rapid City, SD 57701; Appellee Southern Missouri Waste Management Association, Inc., appeared in the person of their attorney, Kenneth W. Cotton, of Wipf & Cotton, Attorneys at Law, PO Box 370, Wagner, SD 57380; Appellee State of South Dakota appeared in the person of Charles D. McGuigan, Assistant Attorney General with the State of South Dakota, 500 E. Capitol St, Pierre, SD 57501; This matter having come on before the Court pursuant to a Notice of Appeal filed with the Court on or about January 18, 1994, by Appellant Vote, said hearing being the agreed upon time for oral arguments on VOTES appeal on the South Dakota Board of Mineral and Environments Findings of Fact, Conclusions of Law, and Order Dismissing Petitioners and Interveners Petitions and granting a Solid Waste Permit to SMWMA, Inc., said order being dated on or about December 23, 1993; the Court having fully reviewed the record in this matter, including all of the oral testimony given at the contested case hearing held before the Board of Minerals and Environment on December 8, 9, & 10, and continued on December 20, 1993, as well as all the evidentiary exhibits and engineering data submitted therein, and upon consideration of the briefs duly filed in this matter, and the oral arguments given by counsel at the hearing on this matter; and further, the Court being fully knowledgeable in the records, files, and premises herein, and upon good cause shown; it is hereby,

ORDERED that the Findings of Fact, Conclusions of Law, and Order dismissing petitioners and interveners petitions and authorizing the issuance of a solid waste

permit to Southern Missouri Waste Management Association, Inc., duly made and entered by the South Dakota Board of Minerals and Environment, on or about December 23, 1993, is in all respects affirmed; and it is further,

ORDERED that the administrative appeal filed by Appellant VOTE is hereby denied in all respects based upon the above affirmants [sic] of the prior action taken by the South Dakota Board of Minerals and Environment in this matter.

Dated this 4th day of October, 1994.

BY THE COURT:

/s/ Steven L. Zinter
Judge of the Circuit Court

ATTEST:

/s/ Mary L. Erickson
Clerk of Courts

/s/ by Sharon McEntaffer
(SEAL) Deputy

STATE OF
SOUTH DAKOTA
CIRCUIT COURT,
HUGHES CO.
FILED

OCT 04 1994

Mary L. Erickson Clerk
By /s/ Deputy

State of South Dakota)
) ss
County of Hughes)

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 6th day of Oct. 1994.
MARY L. ERICKSON,
Clerk of Courts
By /s/ Sharon McEntaffer
Clerk of Courts/
Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Southern Division

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe, Plaintiffs, vs. SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation. Defendant.	FILE NO. 94-4217 THIRD PARTY COMPLAINT

COMES NOW, Southern Missouri Recycling & Waste Management District, a South Dakota Political Subdivision, hereinafter referred to as "District", by and through its legal Council, [sic] Kenneth W. Cotton, of Wipf & Cotton, Attorneys at Law, 107 S. Main St., Wagner, South Dakota, and respectfully sets forth the following cause of action against the State of South Dakota, hereinafter "State," as follows:

I.

That District hereby incorporates its Answer to Plaintiff's Verified Complaint, duly filed herein, as fully and completely as if set forth verbatim herein, and attaches a

copy of said Answer to this Third Party Complaint, marked Exhibit 1.

II.

That State was duly admitted into the union pursuant to an enabling act, the same being the Act of February 22, 1889, Chapter 180, 25 stat. 676.

III.

That District is a political subdivision of the State of South Dakota, and is set up and structured as a Regional Recycling & Waste Management District pursuant to SDCL § 34-A-16-1, [sic] et. seq.; that said District was duly created by the filing of Articles of Incorporation with the South Dakota Secretary of State's Office, on or about August 22, 1994; that per such statute the District is a political subdivision of the State of South Dakota, and as such, is entitled to rely upon any information given it by the State of South Dakota as to jurisdiction and legality of permits sought by the District from the State of South Dakota for municipal solid waste disposal; and that the predecessor organization to the District was known as Southern Missouri Solid Waste Management Inc., as [sic] South Dakota non-profit corporation, which was formed in February, 1992, for purposes of providing a regional landfill facility for four (4) counties, twenty-one (21) communities, and originally the Yankton Sioux Tribe, all lying in southeastern South Dakota.

IV.

That District has spent in excess of $250,000.00 to date on this proposed landfill facility in site selection, land acquisition, site testing, engineering, design, contested case hearings and expert witness fees, all based upon District's reliance on statements made to it by the State of South Dakota that the South Dakota Board of Minerals and Environment, through the State of South Dakota, had jurisdiction to issue the Subtitle D, Category IIB landfill permit that it did issue the District on or about December 23, 1994.

V.

That District had expended said funds to date on said landfill facility based upon the State's position that the State has jurisdiction over the land upon which the facility is to be constructed.

VI.

That Plaintiff alleges in its Complaint that the State of South Dakota does not have jurisdiction to issue said permit, nor does the State have any jurisdiction whatsoever over lands lying within the "former boundaries" of the original Yankton Sioux land area granted by the Treaty of 1858.

VII.

That in the interest of judicial economy and in the interest of fully and completely litigating all issues raised by the Plaintiff in their Complaint, District alleges that

the State of South Dakota is an indispensable party to this lawsuit, as to the jurisdictional and lack of authority questions raised in Plaintiff's Complaint against the State of South Dakota; and District has a right to have the State involved in these proceedings to defend the jurisdictional and other claims made by the Plaintiff against the State's authority to issue the permit previously referred to.

VIII.

That District is entitled to bring State into this lawsuit as a 3rd party defendant.

WHEREFORE, District respectfully prays the Court to enter judgment, as follows:

1. That State of South Dakota be made a 3rd party defendant in this particular action.

2. That the State be required to defend the permit that it has previously issued to the District and to show the validity thereof, based upon their previous statements that the State of South Dakota has jurisdiction over the land upon which the proposed facility is to be built.

3. That the District recover its costs and disbursements on this action, including reasonable attorney fees.

4. That the District be awarded such other and further relief as the Court may deem just and equitable in the premises.

Dated this 18th day of October, 1994.

/s/ Kenneth W. Cotton
Kenneth W. Cotton
Wipf & Cotton
107 S. Main St.
Wagner, SD 57380-0370
Phone: 605-384-5471
Attorney for District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all adverse parties in the above-entitled cause of action by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office Depository in Wagner, SD, on the 20th day of October, 1994.

/s/ Kenneth W. Cotton
Wipf & Cotton
Attorneys for Southern Missouri
and Waste Management District

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe, Plaintiffs, v. SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation, Defendant, v. STATE OF SOUTH DAKOTA, Third Party Defendant.	CIV. NO. 94-4217 ANSWER TO THIRD PARTY COMPLAINT

COMES NOW Third Party Defendant, State of South Dakota, by and through its undersigned counsel of record, and for its answer to the third party complaint filed herein, alleges as follows:

I.

State of South Dakota admits paragraph I and joins in Defendant District's Answer to the extent it does not conflict with the Answer of the State of South Dakota, filed herewith.

II.

State of South Dakota admits paragraphs II and III.

III.

State of South Dakota admits all of paragraph IV except the last three lines of that paragraph which states that South Dakota had jurisdiction to issue a subtitle D permit to the district. State admits that it has the jurisdiction to issue a State type IIB solid waste facility permit to Defendant District pursuant to SDCL ch. 34A-6. Under subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6900 *et seq.*, a permit from the Environmental Protection Agency (EPA) is not necessary to operate a municipal solid waste landfill.

IV.

State of South Dakota has insufficient information to either admit or deny paragraph V and therefore it is deemed to be denied.

V.

State of South Dakota admits paragraphs VI and VII.

VI.

State of South Dakota denies paragraph VIII in that Defendant alleges that it is entitled to bring State into this lawsuit. State admits that it voluntarily consents to this Court's jurisdiction and does not oppose joinder into this action.

WHEREFORE, the State of South Dakota prays for the following relief:

1. That Plaintiff's action be dismissed with prejudice.

2. That the State of South Dakota recover its costs and disbursements in this action, including reasonable attorney fees.

3. That the State of South Dakota be awarded such other and further relief as the court may deem just and equitable in this matter.

Dated this 4th day of November, 1994.

/s/ Charles D. McGuigan
Charles D. McGuigan
Assistant Attorney General

/s/ John P. Guhin
John P. Guhin
Deputy Attorney General

/s/ Roxanne Giedd
Roxanne Giedd
Assistant Attorney General
500 E. Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,	)	CIV. NO. 94-4217
Plaintiffs,	)	ANSWER OF STATE OF SOUTH DAKOTA
v.	)	(Filed Nov. 7, 1994)
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation,	)	
Defendant,	)	
v.	)	
STATE OF SOUTH DAKOTA.	)	
Third Party Defendant.	)	

COMES NOW Third Party Defendant, State of South Dakota, by and through its undersigned counsel of record, and for its answer to Plaintiff's Complaint filed herein, alleges as follows:

I.

State of South Dakota asserts that the Complaint fails to state a cause of action or claim of relief against the State of South Dakota and Defendant District for which

relief may be granted and accordingly the Complaint should be dismissed.

II.

State of South Dakota denies each and every allegation of the Complaint except as otherwise specifically admitted.

III.

State of South Dakota joins in Defendant Southern Missouri Recycling and Waste Management District's Answer to the extent it is not in conflict with this Answer of the State of South Dakota, and incorporates Defendant District's Answer as if fully set forth herein.

IV.

State of South Dakota denies that portion of paragraph I which alleges that this action arises under Art. I, § 8, cl. 3. of the United States Constitution and the Fifth Amendment to the United States Constitution. State admits the remainder of paragraph I except to clarify that the 1892 agreement with the Yankton Sioux or Dakota Indians, in South Dakota, was ratified by Congress in 1894.

V.

State of South Dakota denies that this Court has jurisdiction over the State as this matter is barred by the

Eleventh Amendment to the United State [sic] Constitution. However, State of South Dakota hereby waives its right to invoke the Eleventh Amendment as a bar to this Court's jurisdiction and hereby voluntarily consents to the Court's jurisdiction in this matter.

VI.

State of South Dakota admits paragraph III.

VII.

State of South Dakota denies paragraph IV. Defendant District's landfill site is not within the exterior boundaries of the Yankton Sioux Reservation because the Yankton Sioux Reservation was disestablished by the Act of 1894. *Wood v. Jameson*, 81 S.D. 12, 130 N.W.2d 95, 99 (1964); *State v. Williamson*, 87 S.D. 512, 211 N.W.2d 182, 184 (1973); *State v. Winckler*, 260 N.W.2d 356, 360 (S.D. 1977); *State v. Thompson*, 355 N.W.2d 349, 350 (S.D. 1984); *DeCoteau v. District County Court*, 420 U.S. 425 (1975); *Hagen v. Utah*, ___ U.S. ___, 114 S.Ct. 958 (1994); *Marty Indian School Board, Inc. v. South Dakota*, slip op. Civ. No. 85-4006 (D. S.D. Sept. 16, 1986), *rev.* on other grounds, *Marty Indian School Board, Inc. v. South Dakota*, 824 F.2d 684 (8th Cir. 1987) (slip op. attached as Attachment A).

State of South Dakota denies that EPA grants permitting authority. Permitting authority is created by state law under SDCL ch. 34A-6, and is independent from the regulations contained in subtitle D of RCRA. Under § 4005 of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, if the State demonstrates an

adequate solid waste permit program EPA may delegate *its enforcement activities* to the State. EPA does not delegate permitting authority rather, an adequate State permitting program is a condition precedent to EPA's delegating enforcement authority of subtitle D of RCRA to the requesting state. EPA has made a tentative determination of adequacy of the State's municipal solid waste permit program over non-Indian lands of the former lands of the Yankton Sioux Reservation, and over the non-Indian lands of the former Lake Traverse Reservation (Sisseton-Wapheton) and over non-Indian lands of certain areas which were formerly part of the Rosebud Sioux Indian Reservation. 59 Fed. Reg. 16647 (April 7, 1994). State admits that it has not received final delegation from EPA of enforcement activities for lands covered by the former Yankton Sioux Reservation.

VIII.

State of South Dakota denies paragraph V and notes that household waste by definition is not hazardous waste. ARSD 74:28:22:01, adopting by reference 40 C.F.R. § 261.4(b)(1).

IX.

State of South Dakota admits paragraph VI but points out that Defendant District will be operating a landfill, not a "dump."

X.

State of South Dakota denies paragraph VII. The correct legal description for the permitted facility is the Southwest quarter of the Northwest quarter and the West 320 feet of the Southeast quarter of the Northwest quarter of Section 6, Township 96 North, Range 65 West of the 5th Principle Meridian, Charles Mix County, South Dakota.

XI.

State of South Dakota admits the first sentence of paragraph VIII. State has insufficient information to either admit or deny the remainder of paragraph VIII and therefore it is deemed to be denied.

XII.

State of South Dakota denies paragraph IX. EPA does not have permitting authority for solid waste landfills. An operator of a solid waste landfill must comply with subtitle D of RCRA, but does not have to apply for or receive a permit from EPA. Further, EPA does not grant permitting authority to the States. EPA, upon an adequate showing by a state, may delegate its RCRA enforcement authority to a requesting state. South Dakota's permitting authority is independent from federal law. South Dakota's permitting authority is created by state law and is governed by SDCL ch. 34A-6 and ARSD art. 74:27.

XIII.

State of South Dakota denies paragraphs X, XI and XII.

XIV.

State of South Dakota denies paragraphs XIII, XIV, XV, XVI, XVII, XVIII, XIX, and XX. These claims were fully litigated in a four day contested case hearing before the South Dakota Board of Minerals and Environment and are thus barred by res judicata and collateral estoppel.

XV.

State of South Dakota has insufficient information to either admit or deny the first sentence of paragraph XXI and therefore it is deemed denied. State of South Dakota admits the remainder of paragraph XXI.

XVI.

State of South Dakota denies paragraphs XXII, XXIII and XXIV. These claims were fully litigated before the South Dakota Board of Minerals and Environment and thus barred by res judicata and collateral estoppel.

XVII.

State of South Dakota denies paragraph XXV. First, the lands involved here are not within a "Reservation." *See* paragraph VII, *supra*. Second, in the alternative, Indian tribes do not retain inherent power to exercise civil authority over non-Indian lands. *South Dakota v. Bourland*, 508 U.S. ___, 113 S.Ct. 2309 (1993); *Brendale v. Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408 (1989); *Montana v. United States*, 450 U.S. 544 (1981).

XVIII.

State of South Dakota admits that portion of paragraph XXVI which alleges that "[t]he proposed landfill site is designed to be constructed on the *former* ancestral lands of the Yankton Sioux Tribe" (emphasis added). State of South Dakota denies that the Yankton Sioux Reservation is undiminished. *See Marty Indian School Board, Inc. v. South Dakota*, slip op. Civ. No. 85-4006 (D. S.D., Sept. 16, 1986) (Attachment A). State of South Dakota admits that the proposed site is presently owned by Kenneth McBride, a non-Indian, and admits that the parcel may have once been owned by the United States of America in trust for the Yankton Sioux Tribe. State of South Dakota has insufficient information to either admit or deny the last two sentences of paragraph XXVI and therefore they are deemed denied.

XIX.

State of South Dakota has insufficient information to either admit or deny paragraphs XXVII and XXVIII and therefore they are deemed denied.

XX.

State of South Dakota denies paragraph XXXI (sic).

XXI.

State of South Dakota denies that the Yankton Sioux Tribe has never been subject to a judicial declaration that the Yankton Sioux Reservation was disestablished. *See* paragraph XVII of Answer of State of South Dakota, *supra*

and *Marty Indian School Board, Inc. v. South Dakota*, slip op. Civ. No. 85-4006 (D. S.D., 1986) (Attachment A).

XXII.

State of South Dakota denies paragraphs XXXI, XXXII and XXXIII.

AFFIRMATIVE DEFENSES

I.

The Complaint fails to state a claim upon which relief can be granted.

II.

This action is barred in whole or in part by res judicata.

III.

This action is barred in whole or in part by the doctrine of abstention.

IV.

The Plaintiff Yankton Sioux Tribe has failed to exhaust its available administrative remedies.

V.

By consenting to the State's jurisdiction before the South Dakota Board of Minerals and Environment and

fully participating in the four-day contested case hearing resulting in the issuance of a State permit to Defendant District, the Plaintiff Yankton Sioux Tribe is estopped from alleging that the State of South Dakota now lacks jurisdiction to issue the type IIB permit to the Defendant District.

VI.

During his sworn testimony to the South Dakota Board of Minerals and Environment, Plaintiff Darrell E. Drapeau referred to the area in question as former reservation lands. Direct examination of Darrell E. Drapeau at page 556, attached as Attachment B. Plaintiff Darrell E. Drapeau is now estopped from alleging that the land in question is not a "former" reservation.

VII.

Collateral estoppel bars relitigation of the issue of disestablishment of the Yankton Sioux Reservation. This Court has determined that the Yankton Sioux Reservation was disestablished by the act of 1894. *Marty Indian School Board, Inc. v. South Dakota*, slip op. Civ. No. 85-4006 (D. S.D., Sept. 16, 1986) (Attachment A), *rev.* on other grounds, *Marty Indian School Board, Inc. v. South Dakota*, 824 F.2d 684 (1987).

WHEREFORE, the State of South Dakota prays for the following relief:

1). That Plaintiff's action be dismissed with prejudice.

2). That the court award the State of South Dakota its costs and disbursements in this action, including reasonable attorney fees.

3). That the court award the State of South Dakota other and further relief the court may deem just and equitable.

Dated this 4th day of November, 1994.

/s/ Charles D. McGuigan
Charles D. McGuigan
Assistant Attorney General

/s/ John P. Guhin
John P. Guhin
Deputy Attorney General

/s/ Roxanne Giedd
Roxanne Giedd
Assistant Attorney General
500 E. Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Answer to Third Party Complaint and Answer of State of South Dakota in the above-entitled matter, were served by United States mail, first class, postage prepaid upon James G. Abourezk and Robin Zephier, Attorneys for Yankton Sioux Tribe, 2040 West

Main Street, Rapid City, South Dakota 57702 and to Kenneth W. Cotton, Attorney for Southern Missouri Recycling and Waste Management District, Post Office Box 370, Wagner, South Dakota 57380 on this 4th day of November, 1994.

/s/ Charles D. McGuigan
Charles D. McGuigan
Assistant Attorney General

FILED
JUN 14, 1995
William F. Clayton
Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

The YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members, and DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe, Plaintiffs, -vs- SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a non-profit corporation, Defendant.	Civ 94-4217 JUDGMENT

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT,

Third-Party Plaintiff,

-vs-

STATE OF SOUTH DAKOTA,

Third-Party Defendant.

In accordance with the Memorandum Opinion and Order filed this date with the Clerk,

IT IS ORDERED, ADJUDGED, AND DECREED:

(1) that judgment is entered in favor of plaintiffs and against defendant and third-party defendant on the disestablishment issue, as Congress did not disestablish or diminish the boundaries of the Yankton Sioux Reservation when it ratified the 1892 Agreement with the Yankton Sioux Tribe and therefore, the exterior boundaries of the reservation, as set out in the 1858 Treaty, remain intact.

(2) that judgment is entered in favor of defendant and third-party defendant and against plaintiffs on the regulatory issue, as plaintiffs failed to establish that the Yankton Sioux Tribe may exercise regulatory jurisdiction over the municipal solid waste landfill proposed to be built by Southern Missouri Recycling and Waste Management District on non-Indian land located within the exterior boundaries of the Yankton Sioux Reservation.

(3) that judgment is entered permitting Southern Missouri Recycling and Waste Management District to proceed with construction of its solid waste disposal facility at the site selected; however, during construction of the solid waste disposal facility, Southern Missouri is required to install a composite liner as defined in 40 C.F.R. § 258.40(b).

(4) that judgment is entered in favor of defendant and third-party defendant and against plaintiffs on all other grounds of relief requested by plaintiffs.

(5) that judgment is entered with prejudice.

Dated this 14th day of June, 1995.

BY THE COURT:

/s/ Lawrence L. Piersol
Lawrence L. Piersol
United States District Judge

ATTEST:
WILLIAM F. CLAYTON, CLERK
BY: /s/ Alice R. Raisly
DEPUTY
(SEAL)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, July 27, 1892.

Gentlemen:

The following instructions are given for your guidance in the discharge of your duties as commissioners to negotiate with the Yankton Sioux Indians for the cession of their surplus lands, the authority for your appointment being contained in the appropriation of $11,500, made by the Indian Appropriation Act for the current fiscal year, "To enable the Secretary of the Interior to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress."

The Yankton Sioux Indian Reservation, in South Dakota, was created by the first article of the treaty with the Yankton Sioux of April 19, 1858 (11 Stats., 743), by which they ceded to the United States all the lands then owned, possessed or claimed by them, except four hundred thousand acres described as follows:

"Beginning at the mouth of the Naw-izi-wa-koo-pah or Choteau River and extending up the Missouri River thirty miles; thence due north to a point; thence easterly to a point on the said Choteau River; thence down said river to the place of beginning, so as to include the said quantity of four hundred thousand acres".

As actually surveyed it contains 430,405 acres. There has been allotted and patented to the Indians some 167,325 acres under the Act of February 8, 1887 (24 Stats., 388). The allotments made under the Act of February 28, 1891, have not yet been examined and approved but it is

estimated that they will include about 95,000 acres. Some 852 acres have been reserved for government and religious purposes, leaving a surplus of some 168,000 acres.

The treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof.

You will call a full council of the Indians and submit the subject for their consideration. No undue pressure should be used to induce them to cede the surplus lands, but the adventure to be derived from such action should be fully placed before them. Every member of the tribe has received an allotment of not less than 80 acres of agricultural land, or a double quantity of grazing land, averaging over 150 acres for each member of the tribe.

The surplus lands in their present state of reservation cannot be made to yield any considerable income, while the money which will be paid for their relinquishment, placed at 5 per cent interest will give them an income which will be sufficient to afford them all the assistance they need.

If they are unwilling to cede all the surplus land you will endeavor to obtain the relinquishment of such part thereof as they may be willing to part with.

If they consent to the relinquishment of the whole or any portion of the surplus lands the terms and conditions of sale should then be agreed upon, which should be just and equitable to the Indians as well as the United States.

It is understood that some of these lands are very valuable and will be eagerly sought after. It is therefore suggested the agreement provide for their appraisement and sale to the highest bidder.

The terms and conditions agreed upon in council should be reduced to writing and incorporated in the accompanying form of agreement which should be signed by at least a majority of the male adults of the members of the tribe.

This agreement should also provide for the disposition of the funds to be derived from the cession. If possible the whole amount, or the larger portion, should constitute a fund, the interest of which shall be applied for such purposes as may be agreed upon. Provision should not be made for the per capita payment of a large portion of the purchase money.

If possible, a portion of the interest should be made available for the payment of local taxes on the allotted lands during the trust period. (See Article IV of accompanying form).

When the agreement is freely and properly signed, your certificates and the certificate of the official Interpreter, should be attached to the instrument.

The proceedings of the council should be reduced to writing and attested by your signatures and that of the official Interpreter.

The Indians should be informed that the agreement will not be valid or binding until ratified by Congress.

You are authorized to employ an Interpreter or Interpreters when necessary and the services of the Agency Interpreter are not available.

The accompanying form of agreement is transmitted for your guidance and as an indication of the views of this office as to the proper disposition of the funds, but you are not required to adhere to the same absolutely.

Very respectfully,

/s/ T J Morgan
Commissioner.

(Allen)

P.

EXH 10

REPORT OF THE COMMISSIONER
OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D.C., SEPTEMBER 16, 1893.

. . . .

PAPERS ACCOMPANYING REPORT OF
COMMISSIONER OF INDIAN AFFAIRS.

. . . .

Location. – The Yankton Reservation consists of a tract of 430,000 acres, situated on the left bank of the Missouri River, extending about 33 miles along the river and 20 miles to the interior; it is within the boundaries of Charles Mix County in South Dakota.

. . . .

Citizenship. – Notwithstanding that all the Indians have accepted allotments and land patents have been issued to many of them for their lands, yet their relationship with local State authorities has not changed. The reservation has been within an organized county for many years, yet the county authorities decline to recognize the Indians or any of the residents of the reserve as entitled to the rights and privileges of citizenship. The constitution of the State of South Dakota expressly disclaims any right or title to any lands owned or held by an Indian or Indian tribe and are exempt from taxation, and this is held to disclaim any jurisdiction over the tribe, either civil or criminal, of the residents within an Indian country.

. . . .

The reservation is not public domain of the United States, but is, in fact, Indian country, and (unreadable) are now pending for the relinquishment of the Indian rights in the unallotted lands (unreadable) reservation, and these Indians have not signified their assent that such reservation might be embraced within the Territory of Dakota or State of South Dakota.

Section 1874 of the Revised Statutes of the United States, being part of the organic act of the Territory, provides that "all such territory (i.e., Indian country) shall be excepted out of the boundary and constitute no part of any Territory now or hereafter organized, until such tribe signifies its (unreadable) to the President to be embraced within the Territory," or State.

Article 22 of the constitution of this State provides "that we, the people inhabiting the State of South Dakota, do agree and declare that we forever disclaim all right and title * * * to all land laying within said limits (of the State) owned or held by an Indian or Indian tribes * * * . . . said Indian lands shall remain under absolute jurisdiction and control of the Congress of the United Sates."

It is clear, then, that the United States exercises sole and exclusive jurisdiction over the reservation except in so far as it may see fit to grant the State the right to exercise its jurisdiction.

No right or jurisdiction over the lands embraced in this reservation has ever been granted the (unreadable) except jurisdiction to punish certain crimes committed by Indians, etc. It must follow that (unreadable) the State nor

any of its local officers have the right to establish voting precincts upon or within the Indian country, and the application to compel the county commissioners to establish voting precincts must be denied.

. . . .

Indian court. – The court continues to hold sessions semimonthly and all cases of fault, lewdness, actions for damages, disorder, etc., come before it for trial. There are also some petitions for divorces and voluntary separations. The judges keep their (unreadable) record, and unless some appeal is taken (a seldom occurrence) their mandates are obeyed and sentences executed without complaint. The court exercises a (unreadable) restraint and a good influence.

. . . .

E.W. FOSTER,
UNITED STATES INDIAN AGENT

EXH 610

DEPARTMENT OF THE INTERIOR
CENSUS OFFICE
Bureau of the Census
Library

REPORT ON
INDIANS TAXED AND INDIANS NOT TAXED
IN THE UNITED STATES
(EXCEPT ALASKA)

ELEVENTH CENSUS: 1890.

WASHINGTON, D.C.
GOVERNMENT PRINTING OFFICE 1894
(page 573)

SOUTH DAKOTA.

TOTAL INDIAN POPULATION AS OF JUNE 1, 1890.

* * * *

INDIAN POPULATION OF RESERVATIONS.

AGENCIES AND
RESERVATIONS.

* * * *

Yankton Agency,
Yankton Reservation

Tribe.	Total.	Males.	Females.	Ration Indians.
Yankton Sioux	1,725	824	901	432

* * * *

(page 590)

YANKTON RESERVATION

The Yankton Indian reservation is situated in the eastern part of Charles Mix county, South Dakota. Commencing at the mouth of the Choteau creek, about 45 miles above the city of Yankton, the boundary line extends along the Missouri river, a distance of 30 miles in a northwesternly direction, thence it turns north to a point near Douglas county line. From this point it runs southeast parallel with the Missouri, at an average distance of 22 miles from the same, as far as Dry Choteau creek, which creek from this point to its mouth forms the eastern boundary.

The reservation contains 430,405 acres of land, 385,000 of which may tillable at seasons, but all is suitable for grazing.

* * * *

The agency is situated on the left bank of the Missouri river, midway between the eastern and western boundaries of the reservation, and 30 miles from Armour and Springfield.

* * * *

According to the treaty of 1858 the Yankton Sioux Indians surrendered all their lands in Dakota and in return accepted the present Yankton Indian reservation. The government consented to pay them * * * * It was the expectation of the government that the Indians would become civilized and self-supporting by the expiration of this time. Thirty-two years have elapsed since the treaty. During this time, systematic and organized efforts have

been made by the government and by the Presbyterian and Episcopal missions to reclaim them from heathenism and savagery.

* * * *

EXH 605
53D CONGRESS, SENATE Ex. Doc. No. 27
2d Session.

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Letter from Indian Commissioner concerning treaties with Yankton and Dakota or Sioux Indians, and other papers.

JANUARY 18, 1894. – Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR.
Washington, January 16, 1894.

SIR: I have the honor to submit herewith an agreement made by the commission appointed to treat with the Yankton tribe of Dakota or Sioux Indians, and said Indians, of date December 31, 1892.

This agreement, together with the report of said commission and accompanying papers, was transmitted to this Department by the Commissioner of Indian Affairs, with his letter of December 9, 1893, which letter contains a full statement of the facts in relation to said agreement.

The Commissioner of Indian Affairs also submits a draft of a bill to ratify said agreement and to carry its provisions into effect. The matter was submitted to the

Commissioner of the General Land Office for his consideration of and report upon that part of the proposed bill relating to the disposition of the surplus lands. In his report he suggests certain changes, which have been incorporated in the draft herewith submitted.

I have the honor to be, very respectfully,

HOKE SMITH,
Secretary.

The PRESIDENT UNITED STATES SENATE.

DEPARTMENT OF THE INTERIOR.
OFFICE OF INDIAN AFFAIRS.
Washington, December 9, 1893.

SIR: Under date of July 8, 1893, the Acting Secretary transmitted to this office the report of the Yankton Indian Commission, dated March 31, 1893, submitting an agreement made by it with the Yankton tribe of Dakota or Sioux Indians in South Dakota, of date December 31, 1892, for the cession of their surplus lands in said State, with directions that I give the matter my consideration and make report thereon to the Department.

Allegations having reached this office that fraud and undue pressure had been used in securing this agreement, I recommended, under date of September 19, 1893, that an inspector of the Department be sent to the Yankton Reservation to investigate the manner in which the negotiations with said Indians had been conducted, and whether the agreement represented the wishes of a majority of the tribe, and under date of September 21,

1893, you directed that the necessary instructions be prepared for the guidance of Inspector John W. Cadman in such investigation, which instructions were prepared and submitted to the Department September 22, 1893.

I am now in receipt, by reference from the Department, of Inspector Cadman's report, dated November 13, 1893, in which he concludes that the agreement is gaining friends every day, and, so far as he finds (except possibly in one case), that no undue pressure was used or improper methods resorted to by the commissioners or any other persons, last winter, to secure signers.

The commission was appointed under the authority contained in the appropriation of $11,500, made by the act of July 13, 1892 (27 Stats., 137), "To enable the Secretary of the Interior to negotiate with any Indians for the surrender of any portions of their reservation." etc.

By the first article of the agreement the said Indians cede, sell, relinquish, and convey to the United States, all their claim, right, title, and interest, in and to all the unallotted lands within the limits of their reservation in South Dakota.

In consideration of this cession, it is agreed by Article II that the United States will pay to the Yankton tribe of Sioux Indians the sum of $600,000, as thereinafter stipulated.

By the third article it is agreed that sixty days after the ratification of the agreement by Congress, or at the time of the first interest payment, the United States will pay to the said Indians, out of the said principal sum of $600,000, the sum of $100,000, to be divided among the

members of the tribe per capita, no interest to be paid by the United States on this amount.

By the second section of said Article III, it is agreed that the remainder of the said principal sum of $600,000 shall constitute a fund for the benefit of said tribe, to be placed in the Treasury of the United States, bearing interest at the rate of 5 per cent per annum from January 1, 1893.

By Article IV it is agreed that the fund of $500,000, shall be payable at the pleasure of the United States after twenty-five years, and that during this time the United States may pay, if the necessities of the Indians require it, such part of said sum as the Secretary of the Interior may recommend, not exceeding $20,000 in any one year, interest to cease on the amount so paid.

Article V provides that "Out of the interest due to the Yankton tribe of Sioux Indians by the stipulations of Article III the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior shall determine, as follows: "For the care and maintenance of such orphans, aged, infirm, and other helpless persons of said tribe as may be unable to take care of themselves: for schools and educational purposes for said tribe; for courts of justice and other local institutions for the benefit of the tribe, "such sum of money annually as may be necessary for these purposes, with the help of Congress herein stipulated, which sum shall not exceed $6,000 in any one year: *Provided*, That Congress shall appropriate for the same purposes and during the same time, out of any money not belonging to the Yankton Indians, an amount equal to or greater than the

sum set aside from the interest due to the said Indians as above provided for."

Section 2 of said Article V provides that when the Yankton tribe shall have received from the United States a complete title to their allotted lands, and shall have assumed all the duties and responsibilities of citizenship, so that the fund provided for in section 1 of this article shall be no longer needed for the purposes therein stated, any balance on hand shall be disposed of for the benefit of the tribe as the Secretary of the Interior may determine. Article VI provides that the remainder of the interest accruing on the fund of $500,000 shall be paid to the Yankton Indians per capita semiannually, one half on the 30th of June and one-half on the 31st of January in each year.

Article VII provides that upon ratification of the agreement the United States shall pay to each member of the tribe whose name is signed to the agreement, and each other male member 18 years or older at the date of the agreement, $20 in one double eagle, struck in the year 1892, as a memorial of the agreement. If coins of said date are not in the Treasury, another date may be substituted. This payment shall not apply upon the principal sum nor upon the interest thereof.

By Article VIII it is stipulated that such part of the lands ceded as were then occupied by the United States for agency, schools, and other purposes shall be reserved from sale until no longer needed for such purposes, but that all other lands included in the cession shall, immediately after the ratification of the agreement, be offered for sale through the proper land office, to be disposed of

under the existing land laws of the United States to actual and bona fide settlers only.

Article IX provides that during the trust period of twenty-five years such part of the lands allotted to members of the tribe as the owner thereof can not cultivate or otherwise use advantageously may be leased for one or more years at a time, such leasing to be subject to the approval of the Yankton Indian agent and with the consent of the Commissioner of Indian Affairs: *Provided*, That such leasing shall not in any case interfere with the cultivation of the allotted lands by the owner thereof to the full extent of his ability.

The intent of this provision is to compel every owner of allotted lands to cultivate the same to the full extent of his ability to do so before he shall have the privilege of leasing any part thereof, and then he shall have the right to lease only such surplus of his holdings as he is wholly unable to cultivate or use advantageously.

This provision is to apply alike to both sexes and to all ages, parents acting for the children who are under their control and the Yankton Indian agent for minor orphans who have no guardians.

Article X stipulates that any religious society or other organization then occupying, under proper authority, for religious or educational work amount the Indians, any of the ceded lands, shall have the rights for two years from the date of ratification, within which to purchase the land so occupied, at a valuation to be fixed by the Secretary of the Interior, which shall not be less than the average price paid the Indians for the ceded lands.

Article XI provides that if any member of the tribe shall die within twenty-five years without heirs his property, real and personal, including allotted lands, shall be sold under the direction of the Secretary of the Interior and the proceeds added to the fund provided for in Article V for schools and other purposes. Article XII provides that no part of the principal or interest arising under the agreement shall be subject to the payment of debts, claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of the agreement.

Article XIII provides that all persons who have been allotted lands on the Yankton Reservation who were, at the date of the agreement, recognized as members of the tribe, including mixed bloods, whether of white blood on the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians.

By Article XIV it is stipulated that all allotments to members of the tribe not yet confirmed shall be confirmed as speedily as possible, subject to the correction of errors, and that Congress shall never pass any law alienating any part of the allotted lands.

Article XV recognizes as just the claim of 51 Yankton Sioux Indians who were employed as scouts by Gen. Alfred Sully in 1864, for additional compensation at the rate of $225 each, aggregating $11,475, and provides that within ninety days after the ratification of the agreement the same shall be paid to said scouts or their heirs.

Article XVI provides that if the United States shall question the ownership of the Pipestone Reservation (in Minnesota) by the Yankton tribe under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal; and the United States shall furnish, without cost to said Indians, at least one competent attorney to represent the interests of the Indians before said court. It further provides that if the said Secretary shall not, within one year after the ratification of the agreement, refer the questions to the Supreme Court, such failure shall be construed as, and be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of Sioux Indians, including the fee to the lands.

Article XVII provides that no intoxicating liquors or other intoxicants shall ever be sold or given away upon any of the ceded lands, nor upon any other land within the Yankton Reservation, the penalty to be such as Congress may prescribe in the act ratifying the agreement.

Article XVIII provides that nothing in the agreement shall be construed to abrogate the treaty of April 19, 1858, and that the Yankton Indians shall continue to receive their annuities under said treaty. Article XIX provides that when the agreement shall have been ratified by Congress an official copy of the act of ratification shall be engrossed in copying ink, etc., and sent to the Yankton Indian agent to be copied by letter press in the "Agreement Book" of the Yankton Indians.

Article XX provides that all young men of the Yankton tribe of Sioux Indians, 18 years of age or more, shall be considered adults, and that the agreement when signed by a majority of the male adults shall be binding upon said Yankton Indians, but shall not be binding upon the United States until ratified by Congress.

Refusal by Congress to ratify the agreement shall release the Indians under it.

The agreement purports to be made by J. C. Adams, John J. Cole, and I.W. French on the part of the United States. It is not, however, signed by the latter, in explanation of which Messrs. Adams and Cole state that Mr. French was appointed a member of the commission in place of Dr. W.L. Brown, resigned, but that he never qualified as such commissioner.

The agreement purports to be signed by 254 male adults, members of the tribe, 7 of whom signed by power of attorney. C. F. Picotte, U.S. interpreter, certifies that the agreement was freely signed by more than a majority of the adult male members of the tribe.

None of the names are signed to the agreement by mark, although it is evident that many of the signatures were not written by those purporting to sign. There appears to be no doubt, however, that the signatures were duly authorized.

The number of male adults belonging to the tribe is reported to be 458, 230 being a majority.

The Yankton Reservation was created by the first article of the treaty of April 19, 1858 (11 Stats., 743) by which the Yankton Sioux ceded to the United States all

the lands then owned, possessed, or claimed by them, except 400,000 acres described as follows:

Beginning at the mouth of the Naw izi wa koo pah or Choteau River and extending up the Missouri River thirty miles: thence due north to a point: thence easterly to a point on the said Choteau River; thence down said river to the place of beginning, so as to include the said quantity of four hundred thousand acres.

As actually surveyed it contains 430,495 acres. There has been allotted and patented to the Indians some 167,325 acres under the act of February 8, 1887 (24 Stats., 388).

The allotments under the act of February 28, 1891 (26 Stats., 594), have been made in the field, but have not yet been examined and approved. It is estimated that they will include about 95,000 acres, leaving a surplus of some 168,000 acres. The treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof.

The price proposed to be paid for these lands ($600,000, and $20 to each male adult) is some $609,160, or $3.62 1/2 per acre.

In addition to this the Government is bound to appropriate a sum not exceeding $6,000 per annum. In fixing the price to be paid for settlers for lands, I do not think this somewhat indefinite agreement should be taken into account, and suggest that in the event of ratification such price be fixed at $3.75 per acre.

As to the reasonableness of the compensation, the commissioners, after stating that the Indians demanded $6 per acre, say:

Their reservation contains good lands, at least a fair average of South Dakota lands, if not better, and all things considered, what we allow them for their lands is all they are worth in their present condition, and though a liberal price for the Indians, it is as low as these lands could be purchased from them without coercion, and about what we think they should receive.

The disposition to be made of the funds is satisfactory to this office. As to the provision for the payment of the scouts, the commissioners remark:

This claim was called to our attention and its settlement was demanded in connection with this transaction. Upon an investigation we became satisfied that the claim is just. That these soldiers were employed by Gen. Sully, an officer of the U.S. Army, and that the service ordered by him was performed, and was most effective in protecting the lives and property of white people, there is no doubt. But because of irregularity no officer of the Government is authorized to pay their claim, and after twenty-eight years of patient waiting they appeal to us to include the settlement of their claim in our negotiations with the tribe.

The records of this office show that the sum of $3,825 was paid 51 Yankton scouts ($75 each) during the fall of 1878.

March 2, 1892, Senator Pettigrew, from the Committee on Indian Affairs, submitted a report (No. 302, Fifty-second Congress, first session) on Senate bill 696, which contains all of the correspondence on the subject. The committee says:

In the spring of 1864 Gen. Sully enrolled 51 of these Indians as scouts and issued to them some guns and condemned clothing, and promised them additional compensation at some future time. Gen. Sully says no specific sum was stated. The Indians say they were to receive $300 each and that they were in the service over nine months. In 1871 the War Department paid these scouts $75 each. At first the Indians refused to accept this sum, but were told that they had better take it, as receiving that amount would not in any way prevent them from getting the remainder of the $300 which they claimed was due.

This bill appears to have been reached in the Senate and "passed over without prejudice."

A bill for the payment of these scouts was also introduced in the House of Representatives (No. 10277) at the second session of the Fifty-second Congress, but aside from its reference to the Committee on Indian Affairs no action appears to have been taken.

It is also observed that by the act of February 25, 1869 (15 Stats., 275), the sum of $10,000 was appropriated "for the relief of the Yankton Sioux tribe of Indians, in Dakota Territory, in fulfilling treaty stipulations, where the money has been misappropriated, to be expended under the direction of the governor and acting superintendent of Indian affairs of Dakota Territory, and to be considered

as an offset against any claim these Indians may have against the Government for services during the late war," but I am unable to see how this can be regarded as a payment to the scouts in any sense.

With reference to Article XVI, relating to the Pipestone Reservation, it is remarked that this reservation was established by Article VIII of the treaty of April 19, 1858, which provides as follows:

The Yankton Indians shall be secured in the free and undisturbed use of the Red Pipestone quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulates and agrees to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they shall desire.

A reservation 1 mile square was surveyed under this provision.

In the case of the United States v. Carpenter (111 U.S. 317) the Supreme Court held that the action of the Government in causing the tract described to be marked on the official plats in the land offices as reserved from sale was clearly within the line of its duty under the stipulations of the treaty.

The act of March 2, 1889 (25 Stats., 1012), provided for the appraisement and sale of a portion of this reservation, the act to be of no force or effect unless the Yankton Indians should consent to its provisions. They refused to

consent to the sale of any of the lands except those occupied as a right of way for a railroad.

Although the title of these Indians in this reservation has not been regarded as a fee simple, their right to control and retain it so long as they may desire has been fully recognized.

Article XVII, prohibiting the sale or disposition of intoxicants upon any of the lands now within the Yankton Reservation, seems to be a desirable provision, and from the decision of the Supreme Court in United States v. Forty-three Gallons of Whisky (93 U.S., 188), the stipulation would appear to be valid if ratified by the United States. The penalty should be the same as that prescribed in section 2139 of the Revised Statutes.

I see no serious objection to any provisions of the agreement except, possibly, that binding the United States to appropriate an annual sum for the support of the indigent, etc., and have the honor to recommend that it be submitted for the consideration of Congress.

In this connection I have the honor to invite your attention to the fact that a bill was introduced in the Senate at its last session (S. 442) to ratify this agreement, upon which report was made by this office September 22, 1893, in which it was stated that if the result of the investigation ordered by the Department should warrant such action, the agreement would be prepared for transmission to Congress, accompanied by the draft of a bill to ratify the same. I have accordingly prepared the draft of a bill for that purpose, in the usual form and herewith transmit the same in duplicate.

Although it is probably not the duty of this office to draft a provision for the opening of the lands for settlement, I have for convenience incorporated a section for that purpose, in line with similar acts. A reference to the Commissioner of the General Land Office for his views upon this section is respectfully suggested.

I also transmit duplicate copies of this report, the agreement, report of commission, proceedings of councils, and of the report of Inspector Cadman.

Very respectfully, your obedient servant,

FRANK C. ARMSTRONG,
Acting Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

REPORT OF THE YANKTON INDIAN COMMISSION.

WASHINGTON, D.C., *March 31, 1893.*

SIR: The commissioners appointed to negotiate with the Yankton Sioux Indians for the cession of their surplus lands have concluded their work with the Indians, and have the honor to submit herewith, as a part of this report, an agreement concluded with the Yankton Indians, dated December 31, 1892, for the sale and cession to the United States of all their surplus lands, amounting to about 168,000 acres, at a fixed price, and containing such provisions as were deemed wise and desirable for the Indians and for the Government.

Under our instructions we met at the Yankton Indian Agency on October 1, 1892, and proceeded to the work assigned to us. Upon looking over the field and inquiring into the conditions we found that the Yankton tribe was

divided into three factions, two large factions of nearly equal numbers known as the Selwyn faction and the Brunot faction, and a smaller one known as the Feather-in-ear faction. We were informed that at times the rivalry between these factions became very bitter, so that a measure proposed or favored by one would, for that very reason, be opposed by the other. As an illustration of this factional contention, we were informed that the Department sent for a delegation of the Yankton Indians to come to Washington and appropriated money to pay the expenses. The tribe desired to send the delegation and met in council for the purpose of appointing the delegate, but were unable to agree as to who should come, and after counciling all summer without coming to an agreement the effort was abandoned and the money was returned to Washington.

The Indians had been apprised of the appointment of this commission, and the factions had patched up a truce, and the tribe had appointed a committee of 24, consisting of 3 persons from each of the 8 bands, with 10 moderators, to confer with the commission on the part of the Indians. On October 8 a general council of the tribe was held, at which the commissioners fully laid their mission before the Indians and assured them of their intentions to deal fairly with them.

Proceedings of the council of October 8, and of all subsequent councils, to the close of the negotiations, were kept as fully and as accurately as possible without the aid of a stenographer, and are submitted herewith as a part of our report.

During the first week of our labors Dr. Brown was called away, and was absent about six days, covering the period of our first council.

On October 10 Commissioner Cole received a telegram announcing a fatal accident to his oldest son, a young man 22 years old, and this, with the serious illness of his wife, kept him away from the reservation till November 26.

On October 25 Colonel Adams returned home to till political appointments made before his appointment upon the commission, and was absent till November 10.

On December 17 Dr. Brown resigned from the commission and was relieved and left the reservation on January 5, 1893.

On February 2 Colonel Adams was again called away and was absent fourteen days, and on March 5, after the work of the commission on the reservation was nearly complete, he was again called away, and proceeded to Washington without returning to the reservation.

During the absence of a part of the commission, the remaining commissioners continued the work of negotiating with the Indians, but to those familiar with such negotiations, the great delay from such interruptions will be apparent.

On October 24 the commission met the committee of 24 representing the Indians, but were unable to secure from them any proposition. At this meeting it was evident that the factional spirit has again revived. There had been a disagreement on this committee and 7 of its members were absent from the meeting.

On the return of Commissioner Cole the work of the commission was earnestly taken up and vigorously pushed forward, and councils were held on December 2, 3, 5, 7, 9, 10, and 13. In these councils we urged the Indians to talk and fully lay before us their thoughts, feelings, and intentions. We were successful in getting a very free expression from them, and while they indicated quite fully the conclusion they had come to, it was evident that there was a serious clog in the wheels, the nature of which was not disclosed at these councils.

To show the temper and animus of the Indians at this time, we submit the following extracts from their speeches, under headings indicating their character.

FAVORING A SALE.

WILLIAM T. SELWYN (December 2). "For my part, I do not know whether the people want to sell their land or not, and I do not desire to influence any one in either way."

JOHN OMAHA (December 3). "Now, my friends, I want you to listen to me. I am in favor of disposing of the surplus lands."

ROBERT CLARKSON (December 5). Made a speech moderately favoring the sale.

JOHN OMAHA (December 10). Speaking of the committee of 24 said: "This was the 11th day of October it was decided by the committee that they would sell the land. They were discussing whether the (minimum) price should be five dollars or six dollars per acre when I entered. They asked me the question, and I said I was in

favor of six dollars per acre. I do not know of a final decision which the committee came to since that time. That is what I wish to be known."

TOM No. 1 (December 10). Spoke favorably for the treaty, but in an indifferent way, and concluded: "I desire to make this speech and do not care whether they sell the land or not."

JOHN OMAHA (December 13). "I desire to say that we ought to have our land sold under the appraisement; the lowest would be about six dollars per acre, and not to go any below that."

OPPOSING A SALE.

RUNNING BULL, *Chief* (December 2). "On my part I never extended an invitation to these commissioners to come out here. I did not say, "My friends, come out to us; we have some surplus lands we wish to sell to you."

PETER ST. PIERRE (December 3). "This land should not be sold and the commissioners should leave here without arranging for the sale of the land. [How!] If we answer them direct I think it would be best. [How!] I do not think, when we have already made up our minds not to sell, that we should keep these commissioners here longer by not making known the decision we have come to. * * * I am in favor of holding this land and not selling it for the coming sixteen years."

WILLIAM BEAN, *Chief* (December 3). "Now, I hope my friends, you will do all you can for these people, but at the same time you will have to go without making any treaty this time." [How!]

JANDRAN, *Chief* (December 3). "All these claims should be settled first before the commissioners negotiate for these lands. This does not depend on the commission, but desire that they be investigated first and then confer for selling our lands.

WHITE SWAN, *Chief* (December 3). "My friends, you came here to negotiate for the sale of these surplus lands, but it will be very hard to do so as we have all these matters to look up first. [How!]

* * * My friends, I hope you will go away without making any treaty." [How!]

FEATHER IN THE EAR, *Chief* (December 3). I illustrate his desire not to sell by saying: "If a boy as a home he is happy, and I want to feel like that boy."

JOHN GASSMAN (December 3). "The members of the committee remember that at that meeting we decided we should not sell these surplus lands, and we still hold to this decision."

IRON BULL (December 3). "Now, my friends, when you go back I wish you would tell the President that we do not care to dispose of our surplus lands."

FELIX BRUNOT, (December 10). "Speaking of the action of the committee of 24: "At a meeting yesterday this question was put, Whether we will sell our land or not, and asked them if they did not want to sell their land, and they answered and said, 'How'; but if the commission prefer to stay and talk more that is their own interest, but we have given our answer."

EUGENE BRUNOT (December 10). Speaking of the committee of 24, said: "They have decided and desire to

lay their answer before you. * * * They have come to a final conclusion that they do not want to sell their land, and they have come to this conclusion." [How!]

IRON BULL (December 10). Referring to the action of the committee in deciding against the sale, said: "We have come to a decision and desire that you respect it." [How! and clapping.]

PETER ST. PIERRE (December 10). "There is a large crowd here, and I move that all who do not desire to sell their land step out of this room and some one count them. [How! and applause.]

* * *

I desire that this business be settled now." [How!]

PETER ST. PIERRE (December 10). In speaking against the sale, said: "I wish to say one thing about our agent. He is here to help us on occasions of this kind. He should see that a majority vote of the people is respected. [How!] * * * I think it is only just, when we have given our final decision not to sell, that the commission should depart. [How!] * * * It has been decided on the part of the people that they have come to a final conclusion, and if our agent does not protect us in this we will see that some one else does." [How!]

FELIX BRUNOT (December 10). "It was declared by two parties that they desire to sell, and by two that they did not. Now, I think that it should be decided at this meeting here. If, by vote, they desire to sell the land they should go to the commission and say so; and if not, say so. * * * Do you want the people to decide the question now? [How!] I move all the people in favor of selling

their land keep their seats, and those who do not want to sell their land get up and go outside." [How!]

PETER ST. PIERRE (December 13). "I, you know, am opposed to sale, but we ought to meet these commissioners like men. I am against sale. * * * Now, if we appoint the committee of six asked. I shall make some propositions to the commissioners and the people."

DISTRUST AND OPPOSITION.

HENRY SELWYN (December 2). "In two previous treaties entire payment has not been made, and that is the way this would probably be. Until all things are carried out and straightened up this land should not be sold." [How!]

HENRY SELWYN (December 3). "If you deal with a man and find he is not truthful you do not wish to have any more dealing with him. We have made treaties with the Government and they have not kept all the stipulations in these treaties, and I fear to make any more."

JUMPING THUNDER, *Chief* (December 3). "As some others have stated, when these claims are looked up and satisfactorily settled, then we shall confer for the sale of our lands."

PETER ST. PIERRE (December 10). "It has been said that we had no right to the Pipestone Reservation. In the treaty of 1858 this Pipestone Reservation was made a condition of the treaty, and it was not signed until the Government bought it back and gave it to us, who owned it. If we make a treaty ever so binding, and send it on to

Washington, it is changed. I am opposed to negotiating at the present time."

DISTRUSTING THE GOVERNMENT.

WILLIAM T. SELWYN (December 2). "If we make a treaty can we go to a land office and have it recorded before it goes to Washington, that we may know that it is not changed? Sometimes commissioners have been sent out here to us to make propositions, and changes have been made in the words of the treaty."

EUGENE BRUNOT (December 2). " * * * I think the treaty will be made in about the same manner and sent on to Washington, and the propositions in this treaty will be subject to change."

RUNNING BULL, *Chief* (December 2). "I was a member of a committee once that made a treaty with the Government and the promises and stipulations made in this treaty were disregarded by the Government. * * * On account of this violation we fear any commission sent out by the Government."

HENRY SELWYN (December 3). "When the commission was sent out to negotiate in 1858, Struck by the Rees refused to sign the treaty to sell the land until the Pipestone quarry was returned to the tribe. When the Government promised to give this back to the Indians Struck by the Rees then signed the treaty so that the basis on which this treaty of 1858 was made was the return of the Pipestone quarry.

The speeches of the Indians were full of complaint against the Government, and we have not here made any

attempt to give a synopsis of their various charges, but by reference to the council proceedings it will be seen that the grievances of the Indians, real and imaginary, stood greatly in the way of treating with them. But, there was some greater obstacle for which we had to continue our search, and which we finally determined was factional contention more than anything else.

Of the four persons who in some measure favored a sale John Omaha was the strongest and most outspoken, but he was on the police force; and after Dr. Brown's resignation he joined with the other Government employ'es [sic] in working against the treaty, and opposed it to the end. On the other hand, William T. Selwyn, who spoke so moderately on the subject that it was difficult to determine whether his speech should be placed with those favoring or those opposing a sale, worked diligently for a sale, and was the first to sign the agreement.

Notwithstanding the discouraging tone of these councils we were fully satisfied that nearly all the Indians realized that it was decidedly to their interest to sell their surplus lands, and desired to do so if some real or imaginary objection could be removed. We therefore pressed forward as undaunted and with as much zeal and determination as though the Indians had been clamoring for a treaty.

RESIGNATION OF COMMISSIONER BROWN.

DR. BROWN (December 17). It seems that for a long time we have got farther and farther from this treaty, and it has been represented to my brother commissioner that Dr. Brown was in the way of this treaty. I believe that this

statement is absolutely false. I believe that is only an excuse urged by the men who wish to defeat this treaty. Still, it does not seem that we can make a treaty under present circumstances, and it may be that my judgment is wrong and that I am really in the way, and in order that there may be nothing in the way of your people and the making this treaty, I have sent my resignation to the Secretary of the Interior, and will leave the other two members alone to do this work.

We determined that it was best to proceed at once to draw up an agreement to submit to the Indians, without waiting first to agree with them upon the terms. We decided upon the price we were willing to pay them for their surplus lands, and on December 10 made them a definite offer to be considering while we were preparing the agreement. Before entering upon this part of our work we had studied the conditions and requirements of the Indians carefully and endeavored, as far as possible, to provide for them in the agreement. After this instrument was drawn out in full, we submitted it to the Department for criticism and suggestion, and then modified it accordingly.

We had asked the tribe to appoint a committee of six to confer with us in drawing the agreement, and the friends of the treaty appointed three members of this committee, leaving three to be appointed by the opposition, but that part of the tribe never took action and therefore the three members already appointed were not recognized by us; but we called together small parties of the chiefs, headmen, and leaders, and conferred with them in drawing the agreement, and after it was written, we continued to call such small councils, to whom we

read and explained the agreement for the benefit of the tribe. This work was continued from day to day until the 21st day of January, when we called a full council of the tribe, sending couriers to all parts of the reservation to notify the Indians that we would submit an agreement for their approval. The agreement was submitted, read, interpreted and explained to a full council, at the close of which we took between fifty and sixty signatures to it. Councils for signature were continued from day to day until March 8, when, having a safe majority, we closed up the work of the commission on the reservation.

PLAN OF PURCHASE.

Our letter of instructions contained the following paragraph:

"If they consent to the relinquishment of the whole or any portion of the surplus lands the terms and conditions of sale should then be agreed upon, which should be just and equitable to the Indians as well as to the United States. It is understood that some of these lands are very valuable and will be eagerly sought after. It is therefore suggested the agreement provide for their appraisement and sale to the highest bidder."

Under our instructions we felt at liberty to make a direct purchase of the land, or to secure cession in trust for appraisement and sale, as our judgment might dictate. But we inferred from the wording of our instructions that the preference of the Department was for cession in trust for appraisement and sale, and upon this point we asked for information as follows:

CHICAGO, ILL., *November 11*, 1892.

SIR: I have wind you suggesting that you delay instructions till this letter reaches you.

I suppose you will not want to make any changes in our commission or instructions, except what may be necessary to treat with the Indians successfully and secure a desirable agreement.

If other desirable action is taken I do not think that any change of the commission will be necessary.

Our instructions, as I understood them from the first, and as they were explained to me at the Indian Office, do not necessarily require any change. The instructions, taken together with the form of agreement submitted with them, indicate that a procedure on the basis of a cession of the lands to the United States, in trust, for appraisement and sale for the benefit of the Indians, is *preferred*, and I am informed that this is Gen. Morgan's desire, but I think we are still free under the instructions to make a straightout purchase, if that seems to be the best method of procedure.

It is essential that the commissioners should be made to clearly understand that they are to consider the full scope of the instructions and if a direct purchase is considered preferable by you, in case the lands can be purchased at a fair price, that should be clearly indicated.

Most respectfully yours,

JOHN J. COLE.

HON. JOHN W. NOBLE.
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, November 16, 1862.

SIR: Referring to the instructions for the guidance of the commission to treat with the Indians of the Yankton Agency, S. Dak., for the cession and sale of their surplus lands, I deem it proper to further inform you that the commission are not necessarily confined in your negotiations to a purchase with the understanding that the lands are to be subsequently sold upon appraisement, but that you can fix the price of the lands to be paid the Indians outright, or the money to be deposited in the Treasury for their benefit. Both plans are available, but to prevent misappropriation it is to be understood that the plan for the purchase of lands to be afterwards sold on appraisement, is not alone available. * * * .

Very respectfully,

JOHN W. NOBLE, *Secretary.*

HON. J. J. COLE,
Yankton Commissioner, etc.

The minds of the Indians had been determined towards the appraisement plan by the commissioners appointed in 1881, who offered to treat with them for the cession of their surplus lands upon that plan, but fixed the minimum price so high that only the best of the land could have been disposed of under a treaty made upon that basis. While the Indians and their friends were favorable to the appraisement plan, the Indians had fixed in

their minds a minimum price so high that only the choicest of the lands could have been sold, leaving a very large amount of less desirable land upon their hands for the sale of which it would have been necessary to enter into a new agreement with them, reducing the minimum price. It was also a part of their plan that the Government should take, at the minimum price, all the lands not sold at a higher rate. It was evident that there were as many and as great obstacles in the way of a treaty on the appraisement plan, as upon the plan of direct sale, and that upon the former plan the commission would accomplish only about one-third of the work which the Government and the Indians desired to accomplish by this transaction, leaving two-thirds or more of the work to be done by future commissions. Under these conditions we decided to proceed upon the plan of direct sale to the United States and made an offer and formulated an agreement upon that plan.

PRICE OF THE SURPLUS LANDS.

The exact amount of the surplus lands could not be definitely determined, as the allotments made under the act of February 28, 1891, had not been approved. But our purchase covers all the lands not allotted to the Indians, and it is estimated that they will amount to 168,000 acres or more.

On the matter of price we encountered much difficulty. Two important factors in determining the value of these lands seem to have been wholly overlooked by both the Indians and their friends: First, That the Indians were

not selling their whole reservation, but less than two-fifths of it, and that more than three-fifths of it would remain in their possession for such cultivation and improvement as Indians will give to it, and free from taxation for twenty-five years; second, that the surplus lands are not in one body, but scattered over the reservation and mixed up with the allotted lands of the Indians. We think the value of these surplus lands per acre would be doubled if the whole reservation were being disposed of by the Indians, to be equally improved by white people and uniformly taxed.

None of the Indians had any well-defined opinion as to the value of their surplus lands, but their ideas varied from $6 per acre upward, many of them imagining that these lands were worth fabulous prices, such as they had heard about some choice improved farms selling for outside of the reservation. The statement in our instructions, which unfortunately had been placed in the hands of the Indians, "It is understood that some of these lands are very valuable and will be eagerly sought after," seemed to confirm in the minds of the Indians their ideas of a very high price for these lands. John Omaha, in his speech of December 13, probably voiced the opinion of the tribe upon this subject in the following words:

I desire to say that we ought to have our lands sold under the appraisement; the lowest would be about $6 per acre, and not to go any below that.

The commission who, in 1884, tried to treat with the Yanktons for the cession of their surplus lands, made a proposition on the appraisement plan and suggested that the minimum price at which any of these lands should be

sold should be $4 or $5 per acre, and encouraged the Indians to believe that they would receive an average of $6 per acre or more. They were proposing to buy from 305,000 acres to 355,000 acres of the best land on the reservation in a solid body.

A letter was received by the Indians from a member of this commission, dated January 25, 1893 – two days after we commenced taking signatures – stating that the writer "had hoped to secure for the Indians from $4 to $6 per acre for their surplus lands, and from this source to create for them a fund of near $1,500,000." The Indians did not take account of the fact that the above commission proposed to buy from them 305,000 or 355,000 acres of their choicest lands in one solid body. In fact, few, if any, of them knew this, and they saw in this letter only the $6 per acre and the $1,500,000 for their surplus lands, and as this princely sum of $1,500,000 was two and one-half times as much as the sum we were offering, it greatly confused our friends and immensely strengthened the opposition. The prices at which the lands around the reservation were being sold also led the Indians to believe that they should receive at least $6 per acre for their surplus lands. Unfortunately, members of this commission, when talking the appraisement plan with the Indians, had figured the results on the basis of $6 per acre. Everything seemed to conspire to fix in the minds of the Indians that their lands were very valuable and that $6 per acre was the smallest price they should think of. All this made it very difficult to convince them that their surplus lands, of about 168,000 acres, scattered about over the reservation mixed up with the Indian lands which will pay no taxes until the Indians get their patents

from the Government, were worth much less than similar lands outside of the reservation, where all lands are cultivated by white men and all pay taxes equally, and that the price we offered them was liberal. Under all these conditions the price became a very serious question and was hard to deal with, and we feel that its solution should be satisfactory to the Indians and to the Government. Their reservation contains good lands, at least a fair average of South Dakota lands, if not better, and all things considered, what we allow them for their lands is all they are worth in their present condition, and though a liberal price for the Indians, it is as low as these lands could be purchased from them without coercion, and about what they think they should receive.

CONDITION OF THE INDIANS.

The Yankton Indians are making satisfactory progress in civilization, and already many of them are wholly capable of taking care of themselves, and for such it would be better if all pecuniary aid of the Government were withdrawn, throwing them wholly upon their own resources, with such counsel and moral assistance as the agent and his assistants could render.

A larger per cent of these Indians could be made self-supporting by a change in their management and the attitude and relations of the Government toward them. Especially is this true of the younger Indians, most of whom have more or less school education and speak the English language. We think a systematic effort should be made to induce such to improve their allotted lands and devote themselves to systematic farming. At first some

aid might be necessary, but with so large a holding of allotted lands, as soon as the reservation is opened, enough should be realized from rentals to give them all needful pecuniary assistance. This change would be a saving to the Government, and a great benefit to the Indians.

There is a large per cent of these Indians who can never be made self-supporting, and will thereon always be a charge upon the Government or upon the tribe, and this contingent are in need of more care, better care, and a larger gratuity than they are now receiving or can receive under the present conditions and regulations of the Government. Under the treaty of 1858 the Yanktons are now drawing an annuity of $15,000, and this will continue until 1908. At present the Government is expending this money for clothing, bedding, etc., which is annually distributed to the families and individual members of the tribe. In addition to this annuity, the Government is now expending, for their benefit and as a gratuity, about $60,000 per annum. Of this sum, $35,000 is expended principally for subsistence, which is distributed in a weekly ration to all members of the tribe. About $5,000 is expended for the shops and farming interests, and about $20,000 for the maintenance of schools. Under the conditions which have existed, this appropriation was a necessity for the welfare of the Indians, and in the main its method of expenditure has been judicious; but whatever the past conditions may have required, under the present conditions the plan of issuing rations promiscuously to all members of the tribe is fraught with much evil, and the welfare of the Indians requires a change. This reservation is a parallelogram, 30 miles long and about 22½

miles wide, and as the most of the Indians are scattered over the reservation, many of them in going for their rations spend more time and effort than the rations are worth. In most cases those living farthest from the agency are Indians who do not need this assistance. With many this weekly ration fosters idleness and directly defeats the purposes of the Government. For the large class who are mainly or wholly dependent upon this ration, it is quite inadequate to their needs, and the same class are also deficient in clothing, housing, etc.

The rude and primitive court which has served the purposes of the Yankton Indians in their tribal condition is already inadequate to the proper administration of justice among them, and must give place to something more commensurate with the wants and demands of civilized life.

The religious training of these people is a factor which should not be overlooked. Under the ministration of the two missionaries, Rev. John P. Williamson, Presbyterian, and Rev. Joseph W. Cook, Protestant Episcopal, the most satisfactory progress has been made, and a very large per cent of the Indians have identified themselves with these churches. Each society maintains three churches on the reservation, the missionaries being assisted by native preachers. To the efforts of these two noble men, the Indians are indebted for much of both their moral and material progress, and in all provisions for the future advancement of the Yanktons, an effort should be made to secure the cooperation of this church influence.

POSSESSIONS OF THE INDIANS.

The Yankton Sioux Indians have an estate which should make them one of the richest communities in South Dakota. Every man, woman, and child of the tribe has an inalienable home in their own right, averaging 150 acres per capita. These homes, and all their tribal estate, are free from taxation for twenty-five years. Under the present contract for the purchase of their surplus lands, they will receive $100,000 in cash sixty days after the ratification of the agreement, and semiannually for twenty-five years $9,500 in cash, with an annual fund of $12,000, expended for schools, etc., and for fifteen years they will receive $15,000 per annum under the treaty of 1858. At the end of twenty-five years they will receive a patent to their homes, and will still have a fund of $500,000 in the United States Treasury to be divided among them per capita.

The possibilities of this vast estate in the hands of an intelligent thrifty people are very great, but what it will amount to in the hands of an ignorant half-civilized people will, depend largely upon the methods adopted by the Government in carrying out the present agreement with these Indians. By the treaty of 1858, the Yankton Indians ceded to the United States their claim to all lands excepting their Home Reservation of 400,000 acres and the Red Pipestone quarries. The Red Pipestone Reservation has been of no pecuniary value excepting as an abiding place. Advancing civilization and the improvement of the surrounding country have immensely increased the market value of the land in this reservation, but aside from this increased valuation from external causes the reservation is worth much less to-day than it

was when they made the treaty with the United States 35 years ago. While the farm improvements on the reservation are very meager, large bodies of timber have been almost wholly destroyed, leaving the reservation nearly denuded of tree life without any compensating improvement. During the 35 years of the Yankton Indians' residence on this reservation, they have received from the Government, under the stipulations of the treaty of 1858, $1,410,000. During the same period, and principally during the past 20 years, they have received from the Government gratuities amounting to about $1,410,000. The tribe has averaged less than 2,000 souls, and this princely sum of $2,820,000 in the hands of a community of industrious, self-helpful, thrifty people, of the same number, would certainly have transformed this reservation into a veritable garden spot, and raised its inhabitants high in the scale of wealth, moral worth, culture, and refinement. Upon a casual view, the Indians have nothing to show for this vast expenditure, and the most searching investigation fails to show an adequate result for this great effort in their behalf; but they have all assumed the form of civilization and live by civilized methods. Indeed, no other method of life is now open for them. The young Indians speak the English language and many of them have a fair common school education. Some have a higher education, and many have acquired considerable knowledge of farming and the mechanical arts. While this result seems to be quite inadequate for the vast effort and expenditure of the Government, it must be remembered that first steps in civilization are slow, and the progress already made furnishes a good foundation for the future

advancement of this people, under greatly improved conditions.

THE TRIBAL CONDITION.

One of the greatest hindrances to advancement in civilization of these people has been their tribal mode of life, and their ownership of land in common and receiving payments from the Government under treaty stipulations, and bounties of the Government for their education, civilization, etc., as a tribe. Under this condition individual effort amounted to very little, and there was even less to stimulate it. The allotment of lands in severalty, which gives to all members of the tribe a home in their individual right, will greatly promote the progress and welfare of this people and the sale of their surplus lands, removing the last great property bond which held them together in the tribal condition, will do much to stimulate individual effort and make progress much more rapid. We think that all proper means should be used to break up the tribal condition and tribal habits of life, and to stimulate individual effort and ambition.

THE SQUAW MEN.

The usual contempt of Indians for white men is intensified when the white man becomes identified with his tribe by marriage. It is not strange therefore that squaw men should be utterly ignored, and this has been a great drawback to the Yankton Indians. The squaw men on the Yankton Reservation certainly average well for their class. Many of them are intelligent enterprising

men, and with the usual incentives to thrift and prosperity they would have brought many valuable lessons to the Indians to help them forward in civilization. But they were not recognized by the tribe, and the status of their offspring was not fixed. Thus the main incentives to activity and progress were removed from them, and they were, for the most part, quite content to let their wives draw the rations and annual allowance of clothing, etc., which they were entitled to as members of the tribe, making but little effort themselves. The allotment of lands in severalty to the wives and children of these men will do much to cure this evil, but, seeing the desirability of a closer identity of these men with the tribe, in a dispatch to the Secretary of the Interior, dated January 23, we said: "Must squaw men be prevented from signing?" Under the same date the Secretary answered: "Squaw men better sign separate paper expressing consent." In compliance with the suggestion of the honorable Secretary, we prepared a paper, to which we took the signatures of about one-half of the Squaw Men, and attached it to the agreement.

PROVISIONS OF THE AGREEMENT.

By simply purchasing the surplus lands of the Yankton Indians we would have complied with the letter of our instructions, but the Government has labored for more than a quarter of a century to civilize these Indians and has expended large sums of money in this effort, and we well knew that we would be expected to take account of this fact and conduct our negotiations accordingly. Careful inquiry into the conditions and requirements of

these Indians soon revealed to us the fact that the purchase of the surplus lands was but a small part of our mission and of minor importance to both the Indians and the Government, the provisions connected therewith for the future welfare of the Indians being of greater importance to them and to the Government than the sale of their surplus lands.

For reasons elsewhere explained, we found it necessary to allow the Indians what we thought to be a very liberal price for their surplus lands, but as the Government is now expending, as a free gift, about $60,000 per annum for the benefit of this tribe, we thought other provisions of the treaty to be of more importance to the United States than the mere matter of price, as we believe that this agreement, if judiciously carried out, will result in a large saving to the Government, and at the same time greatly promote the welfare of the Indians.

But few of these Indians know the value of money or the money value of such useful articles as they desire to purchase. To learn the relative value of money and of other articles, they must have money to expend and thereby learn its judicious use. They have reached a point in civilization where the proper use of money is a necessary condition. In the process of this pecuniary education, some of the Indians must, of necessity, waste or unwisely use their money; but this is a most necessary part of their education, and if the money is paid to them in small amounts, this purpose will be accomplished with the smallest loss to them. For these reasons we have provided that all payments under this agreement shall be made in money, and that the interest payments shall be made semiannually. We at first proposed to make the cash

payment $30,000, and for some reasons it would have been desirable to make the cash payment small, but many of the young men wanted money enough to assist them in commencing farming operations on their allotted lands, and for this reason a cash payment of $100,000 was considered to be desirable.

Our instructions said: "If possible, a portion of the interest should be made available for the payment of local taxes on the allotted lands during the trust period." The question of taxes was a bugbear to these people, and under the great opposition we had to contend with it was deemed advisable to make a specific provision, as in Article V, instead of a general tax clause, as suggested. Up to the present time schools for the Indians have been maintained wholly at the Government expense, and rations, also a gift of the Government, have been issued promiscuously to all the members of the tribe. In this way the Indians were relieved of nearly all responsibility and have been maintained in comparative idleness, greatly to their detriment. Under the provisions of this agreement, judiciously carried out, an appropriation of $30,000 will accomplish much better results for these Indians than the $60,000 which is now being annually expended for their benefit, and we see no reason why even this smaller expenditure need be maintained more than one, two, or three years, as after that time the income from the allotted lands, from cultivation, from leasing, etc., should be ample to meet all the necessities of this people. Until such time as these Indians are able to be thrown wholly upon their own resources, we think the appropriation of $6,000 per annum, provided for in Article V, to supplement a like sum taken from the annual interest, should be made,

but when the provisions of this agreement have become fully operative, we do not deem that any pecuniary help of the Government, beyond the $6,000, will be necessary. Until the Indians are prepared for district schools, probably the present plan for their education is as good as can be devised, but as soon as possible they should be associated in the management and maintenance of these schools, and should be made to feel the interest and responsibility of proprietorship.

In the matter of caring for those needing help a most radical change is necessary to economize the expenditures of the Government and to accomplish the best results for the Indians. The tribe should be divided into at least three classes. Those who are wholly capable of taking care of themselves should have no pecuniary aid, except the general provisions of the Government for schools, etc. Those needing partial support should receive it in such manner as to give them this aid without crippling their energies. Under the present Government management and treatment of these Indians, assistance takes the place of thrift and personal effort and tends to make them a community of paupers and beggars. There are, however, a large number of old people and others who are almost wholly incapable of taking care of themselves, and for whom the present provisions are quite inadequate.

It is not exaggeration to say that some of these people suffer and even die for want of better care. They are not sufficiently housed, sufficiently clothed, or sufficiently fed, and ample provision should be made for all these conditions. To suggest a satisfactory plan in detail, would require a more thorough investigation of all the facts than

we are able to make, and such inquiry will be desirable in preparing to carry the provisions of this agreement into effect, as the prejudices and peculiarities of these people should be taken into account, as well as the many local conditions. A system of small cottages near the agency would probably be the best means of housing this class of people. There should also be a hospital for the care of such invalids as can not be properly nursed and cared for at their homes. One condition in admitting this helpless class to the enjoyment of this trust fund would properly be that the income from their allotted lands and their share in the annual interest should be applied for their maintenance. We think that after the first two or three years the most ample provision for this class may thus be made without any aid from the Government, except the management of the affair. In view of the fact that the settlement and improvement of the reservation by white people will greatly augment the value of the allotted lands, and that the inalienable allotted lands of the old people who will die during the next twenty-five years must of necessity be a valuable inheritance to their heirs living after them, it is worthy of consideration whether some arrangement may not be made by which at least a portion of the interest of these old people in the trust fund in the Treasury may be used for their benefit during their lifetime.

Already these people need a court of larger jurisdiction, and now that they have been allotted their lands in severalty and have sold their surplus lands – the last property bond which assisted to hold them together in their tribal interest and estate – their tribal interests may be considered a thing of the past, and under their rapidly

increasing individual interest, better methods for the administration of justice will be imperatively demanded. The settlement of the reservation by white people will, in a still larger degree, make demand for such courts, but courts established by and for the Indians will no longer answer their demands, and we suggest that such part of the fund for that purpose as may be necessary, shall be paid into the treasury of South Dakota, with a provision that the Yankton Indians shall have the same rights in the courts of the State as tax-paying citizens.

It has been usual in negotiating with the Indians to give a medal to the chiefs, but as the Yanktons are so far advanced toward individual citizenship, we thought it best to meet this requirement as in Article VII.

At present these Indians are receiving no benefit worthy of mention from any of their lands. Not only are their surplus lands lying waste and useless, but the same is true of their allotted lands, as but an exceedingly small portion of these lands is under cultivation. It is doubtful if there is an Indian on the reservation who could cultivate all his holdings of allotted lands. Old men and old women, who are not able to cultivate a single acre, have 160 acres each, and every babe at the breast has 80 acres. There are about 500 Yankton families, and to say that at any time in the near future there will be 500 Indian farms, averaging 125 acres each, is certainly taking an optimistic view of the situation, and yet this would leave them 200,000 acres of unused allotted lands. As none of these lands can be disposed of by the Indians for twenty-five years, the question of leasing becomes a very important one. Without this privilege the Indians must lose the use of at least four-fifths of their allotted lands, and with the

unrestricted right to lease their allotted lands they may easily become landlords only and live off the labor of white men who cultivate their holdings for them. Article IX, if judiciously carried out, will, we believe, meet both of these difficulties and will produce a large annual income. In a pecuniary sense, we think this is the most important provision of the agreement and should receive very careful consideration in carrying the agreement into effect.

Twenty per cent of the tribe are mixed-bloods, whose status has never been definitely fixed, and the consequent doubt and unrest have been a great drawback to the people. This drawback has been the greater as this is the English-speaking element of the people and most ready to take up all the civilized conditions of life. It was apparent to us that a clause in the agreement, fixing the status of mixed bloods, was most desirable, and we think that Article XIII will be a great benefit to the Yankton Indians as a whole, as well as a boon and source of comfort and satisfaction to the very large number who are directly interested.

The Yanktons have always been the friends of the white man, and have subjected themselves to claims for damages in their efforts to protect white settlers against hostile Indians. Such claims are evidently unjust, and we provide that they shall not be paid out of the proceeds of this sale.

The Indians freely expressed their fear that if they sold their lands before all their allotments were confirmed to them, the Government might fail to finish the confirmation – Article XIV was drawn to satisfy them

upon this point. We provide for the correction of errors in confirming these allotments, whether these corrections shall increase or diminish the amount of the surplus lands, but as our purchase covers all the unallotted lands at a liberal price, we do not think that any new allotments should be made for children born since the last allotment, as is desired by some of the Indians.

THE CLAIM OF THE YANKTON SCOUTS.

This claim was called to our attention and its settlement was demanded in connection with this transaction. Upon investigation we became satisfied that the claim is just; that these soldiers were employed by Gen. Sully, an officer of the U.S. Army, and that the service ordered by him was performed, and was most effective in protecting the lives and property of white people there is no doubt. But because of irregularity, no officer of the Government is authorized to pay their claim, and after twenty-eight years of patient waiting they appeal to us to include the settlement of their claim in our negotiations with the tribe. As this claim could not be paid, except by a special enactment of Congress, and as our work will be reviewed by Congress, we felt it to be our duty to comply with this reasonable demand.

THE RED PIPESTONE RESERVATION.

The Red Pipestone quarry was made the *sine qua non* of the treaty of 1858. Until this was assured to him, Struck by the Rees would not sign the treaty. Since that time this possession of the Yankton Indians has been a fruitful source of trouble to them, because of the encroachments

and depredations of white men and of other Indians, and now that their right to that possession is questioned by the Government, fills them with a feeling akin to awe and consternation.

Without evidence to that effect, it would not be thought that it was originally the intention of the Government to draw the line at the use of the quarries by the Indians, retaining the fee to the lands in the United States. The reservation for the home of the Yanktons was to be a parallelogram, with its southern side 30 miles long resting on the Missouri River from the mouth of Chouteau Creek northwestward, and of such width as to contain 400,000 acres. In fixing the points for the northern side, they were placed so far north that the reservation, when surveyed, was found to contain 430,405 acres. It would have been an easy matter to drop this northern side down so as to cut off the 30,405 acres of surplus lands, and the Government had the right to do this, but land in that region was then of so little value that it was not thought worth while to do this, though we are now paying the Indians more than $100,000 for this 30,405 acres of land which was simply thrown into the bargain in 1858. In the light of these facts it does not seem probable that the Government, at the same time, in surveying a section of land to cover and include the Red Pipestone quarry, intended to make the nice distinction between the use of the quarries and the fee to the land. If the language of the treaty of 1858 may be construed to give to the Yanktons the right to work the Red Pipestone quarries, while the fee to the land remains in the United States, we believe that these Indians will always feel that they were either deceived or misled in making the treaty

of 1858, or that the Government now seeks to take advantage of accidental wording in that treaty. We do not believe the Government can afford to place this construction on the treaty of 1858.

We think the Indians' title to this Red Pipestone Reservation can now be purchased for a reasonable sum, and we recommend that an agreement to this end be made with them, supplemental to the present agreement, purchasing this reservation and adding the stipulated amount to the trust fund placed in the Treasury after this agreement.

The Indians demanded that the absolute ownership of the Red Pipestone Reservation by them should be settled by this agreement, making that the condition of their negotiations with us, as Struck by the Rees had done in the treaty of 1858. We explained to them that this is a question which only the courts can decide, and that we could not do more than provide for its reference to the Supreme Court, which we do in Article XVI of the agreement.

THE EXCLUSION OF WHISKY.

The Indians very generally expressed their fear that upon the opening of the Yankton Reservation to settlement by white people, drinking saloons would be established in their midst, to the great injury of their people, and it was made an imperative condition of the sale, by the Indians, that whisky should be excluded. It is certainly to the credit of these people that they demand that this condition should be put into the agreement, and we hope that Congress will fix a penalty for the violation of

this provision which will make it most effective in preventing the introduction of intoxicants within the limits of the reservation.

We prepared a list of the adult male members of the Yankton tribe to use for purposes of comparison, etc., in taking signatures, which we submit herewith as a part of our report. After this list was prepared, it was discovered that Baptiste S. Bear Afraid of Him, opposite ticket No. 90, and John Cook, opposite ticket No. 124, were under age, and therefore these names are stricken out. On this list a red-ink check before the English name indicates the mixed bloods. The summary at the bottom of the list shows the whole number of full-blood Indians to be 370; mixed bloods, 88; total, 458. We secured the signatures of 255, a majority of 26 over one-half. A number of Indians have signified their desire to sign since we left the reservation. We recommend that an opportunity be given them to sign.

This list will serve for the distribution of the gold coin provided for in Article VII.

BASELESS CLAIMS.

The Indians, partly through ignorance and partly through craft, presented to us a long list of claims and grievances. They claim that they had not received their dues under the treaty of 1858; that they had a claim against the Government for land in Iowa and many such baseless and imaginary wrongs. We did not find it difficult to meet these charges to the satisfaction of most of the Indians, but the scout claim, which they pressed very strongly, and the Pipestone question and such matters as

had a basis in fact or in justice, we found more difficult to deal with, and we felt that it was to the interest of both the Indians and the Government that all such differences should be settled, as far as possible, in this transaction, as the Indians demanded.

OPPOSITION TO THE TREATY.

Your commissioners are unfortunate in encountering what at times seemed to be almost insurmountable difficulties. We have thought that the conditions could hardly have been more unfavorable for negotiating with these Indians, and at three different times the opposition felt that they had accomplished their purpose of defeating the negotiations, and most of the friends of the treaty gave up hope, so effectively did they work. The Yankton Indians are a hard people to deal with. They are sufficiently removed from the tribal condition to desire to act individually, and yet they lack the experience and self-confidence which are necessary for such action. The commission which endeavored to buy their surplus lands in 1884, and the commission appointed to negotiate with them for the Red Pipestone Reservation in 1889, both failed to accomplish their purpose. These Indians are unfortunate in being divided into factions, the jealousy of whose leaders makes transactions with the tribe very difficult as certain of the Indians will oppose a measure, simply and solely, because it is favored by others. Not only are the Indians divided among themselves, but there are also jealousy and bickerings among the white people on the reservation; in fact, they, too, are divided into factions, and to be in favor with one side is to be discredited by the other side. That ever present factor of

human nature, "if you are my friend, you must hate my enemy," was manifest among both the Indians and their white friends. To harmonize these factions and to work successfully with each without antagonizing the other was a difficult undertaking, but success in treating with the Indians required its accomplishment.

In the treaty of 1858 Charles F. Picotte received a very large bonus for his assistance in securing the assent of the Indians. This was known and remembered, and fully a dozen persons had looked forward to this treaty for similar benefits, and the leaders were slow to take hold of the matter without some special inducement. This also increased the rivalry between the leaders, and it was also impossible to convince those who were opposing the treaty that those who favored it were not receiving some pecuniary benefit, more than the other members of the tribe. This was a great drawback, and materially prolonged the work of the commission.

The change of administration, during our negotiations with the Indians, was most unfavorable for the work of the commission, and it was more unfortunate that this occurred at a time when there was a lull in the negotiations, because of the absence of one of the commissioners. Some of the people living around the reservation used their influence to keep the Indians from treating with this commission, hoping that they might gain some personal benefit if another commission came from the new administration. Those who were opposing the treaty used this fact to hold their followers back, and if possible to defeat the treaty under this commission.

A large faction of the Indians cherished animosity toward Commissioner Brown, and stubbornly refused to treat with us on this account. So successfully had the leaders of this faction worked with their followers, that after Dr. Brown had resigned and they came over to favor the treaty, they were wholly unable to influence a large number of their followers to come with them and sign the agreement.

The only real grounds for opposition, even to the minds of the Indians, was the price, and on this point we met with great difficulty, as elsewhere narrated. But this objection would have been much less difficult to meet and overcome if it had not been bolstered up by (unreadable) forms of opposition.

The most potent opposition with which we had to contend, was that of certain of the white employ'es of the Government at the agency. Their duties brought them into contact with nearly all the Indians on the reservation, and they found a ready and effective means of accomplishing their purpose, by working through the Indian employ'es of the Government. The two assistant clerks, who are mixed bloods, and whom they had won over to the opposition, were in the main office. One of these was the issue clerk, whose position gave him great power to influence ignorant and selfish Indians, and he was most zealous in his opposition.

Thus the opposition had at their command every means of hindrance which the office afforded, and with the guidance of the white employ'es above alluded to worked most effectively against the treaty. Couriers were sent all over the reservation to oppose the treaty and

spread stories discrediting the commission. These couriers secured all the signatures they could to a paper pledging the signers not to sign the agreement. Feasts were given and councils were held in opposition to the work of the commission. At these councils no person was permitted to speak in favor of the treaty. The leaders of the opposition thus worked day and night to defeat the efforts of the Government in treating with the Indians. Men who came to the agency to sign the agreement were met and influenced to return without presenting themselves to the commission. It is safe to say that all the charges of improper methods in making the treaty, and all distrust of the Indians for the commission, emanated from this source, and that the efforts of the Government were thereby greatly prolonged, and the character of the work injured. But for the opposition of these white employ'es we think that after we had drawn an agreement in every way so favorable to the Indians we could more easily have overcome the objection on account of price, and that no other form of opposition would have been interposed, and that we could have secured the assent of nearly all the tribe to the sale. Few, if any, of the Indians were opposed to the sale of the surplus lands. None were opposed to the terms and provisions of the treaty, and an almost unanimous agreement would speedily have rewarded our efforts if the Indians had been let alone. But for this opposition the large number of couriers sent out by the commission at a great expense to the Government would also have been unnecessary.

When it became evident to the opposition that a large majority of the tribe favored the treaty, they then resorted to running the Indians off the reservation, to keep them

from signing. We visited different parts of the reservation to hold councils and take signatures, and found many of the Indians gone. We issued a feast at White Swan, preparatory to taking signatures in that locality, but when the time came for the council for signatures, the Indians were nearly all gone off the reservation to Swift Bear Camp. We had a similar experience at Cold Spring, in an opposite part of the reservation. Red Gun, an old man nearly blind, wanted to sign the agreement and we went to his house, but were followed by an Indian of the opposition, Mah pi ye ska, we believe, to keep him from signing. He followed us from house to house and kept us from getting any signatures. At another time we went to Red Gun's house and took his signature, and took the signatures of others in the same locality who had expressed their desire to sign, but had been prevented from doing so by the presence of this man. These Indians can not be coaxed or coerced into anything. They yield very slowly to argument, so that in order to accomplish anything with them you literally must create around them an atmosphere which will finally move them. Considering the great difficulties we had to contend with, and that the Indians are so hard to start and so easy to stop in matters of this kind, we are almost surprised that we were successful in our negotiations.

VALUABLE ASSISTANCE.

We wish to state that our best efforts would have been wholly fruitless without more than the usual cooperation on the part of the Government. To what, in the nature of the service, must have been an almost unprecedented support from the Department of the Interior, your

commissioners are indebted for the ability to report the successful negotiation of an agreement, which we believe will be of lasting benefit to the Indians and therefore satisfactory to the Government, and it affords us the same pleasure to make this acknowledgment that it does to announce success in our difficult undertaking.

To Col. E. W. Foster, the agent, we are indebted for much valuable information, suggestion, and assistance in the work of our commission, and we think we can not commend too highly the interest manifested by him. From the time we reached the agency up to the time we completed the agreement ready for signature, he acted as the friend and attorney of the Indians, making requests and suggestions in their interest, but at the same time smoothing the way for us. Could we have had such sympathy and cooperation throughout our work by all the Government employ'es at the agency it would have relieved it from fully 90 per cent of its disagreeable features, and we think would have shortened it very materially.

To the missionaries, Rev. Joseph W. Cook and Rev. John P. Williamson, the Indians, the commissioners, and the Government are jointly indebted for the most valuable assistance in this work. They, better than any one else, understood the Indians and knew their needs and demands, and we felt that they, as the friends of the Indians, had a right to know just what we desired and proposed; and finding them both ready and willing to cooperate with us, we counseled with them freely and subjected all our proceedings to their criticism. They gave us such active sympathy and support that we feel that to

them we are very largely indebted for the success of our efforts.

CONCLUSION.

It has been our aim in these negotiations to make the Yankton Indians entirely self-supporting at as early a date as possible, and to advance them rapidly in civilization. We have endeavored to do this work in all respects in the interest of the Government and of the Indians, and to finish it to an entire completion in every detail. There will be no basis for misunderstanding or discontent in carrying out this agreement with the Yanktons, for everything was done openly and aboveboard, and they well understood every provision of the agreement which they signed, and they signed with the greatest possible deliberation. Chiefs Jandran and Jumping Thunder who, by misrepresentation, had been induced to sign a petition to the Commissioner of Indian Affairs requesting the recall of your commission, sent word to us that they wanted to sign the agreement, and on February 20 we went to their houses with the official interpreter and took their signatures.

We asked Jumping Thunder if he wanted to hear the agreement read. He said, "No; I understand it and am ready to sign." We asked Jandran if he wanted to hear the agreement read, and he said; "No; I am no child. I have heard the treaty read and I understand it. I am ready to sign and I want to tell you why I sign, and I want you to write it down. I sign the treaty because it contains the article about the Pipestone Reservation, the whisky clause, and the clause for the care of the poor, for schools,

etc." Standing Buffalo asked us, "If I sign the agreement and die before July 1, 1893, will my family get my part of the cash payment, or if one of my children dies will I get its part of the cash payment?" These statements and questions indicate the deliberation and understanding with which most of the Indians signed the agreement.

The work intrusted to us is not of great magnitude, yet it is of the utmost importance to the Yankton Indians, and we have felt that our duty as representatives of the Government required us to spare no pains in making this work as complete and perfect as the conditions would admit of. To this end we have spared neither time nor effort to finish our task to the utmost completion, and we trust that our work will meet with the approbation of the Department.

We have the honor to be, most respectfully, yours,

J. C. ADAMS,
JOHN J. COLE,
Commissioners.

THE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D.C.,

December 26, 1893.

SIR: I have had the honor to receive a letter from the Hon. William H. Sims, Acting Secretary, dated the 19th instant, which reads as follows, viz:

I transmit herewith a draft of a bill for the ratification of a certain agreement negotiated with the Yankton tribe of Dakota or Sioux Indians for your examination of that part relating to the disposal of the lands ceded by said agreement and such recommendations in the premises as you may see proper to make.

For your further information I transmit also a copy of said agreement, the report of the commission which negotiated the same and the letter of the Commissioner of Indian Affairs submitting said papers to the Department.

You will please return all papers accompanying this letter with your report. That part of said draft of a bill which relates to the disposal of the lands ceded, and as to which my examination and recommendation are requested, is embraced in the third section thereof, which provides as follows, viz:

That the lands by said agreement ceded, sold, and relinquished, and conveyed to the United States shall, upon proclamation by the President, be subject only to settlement and entry under the homestead and town-site laws of the United States (except section twenty-three hundred and one of the Revised Statutes, which shall not apply), excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common school purposes, and be subject to the laws of the State of South Dakota: *Provided*, That each settler on said lands shall, before making a final proof and receiving a certificate of entry paid to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of three dollars and

seventy-five cents per acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors as defined and described in section twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged except as to the sum to be paid as aforesaid.

In regard to this section, the Commissioner's report on its sixteenth page contains the following, viz:

Although it is probably not the duty of this office to draft a provision for the opening of the lands for settlement, I have for convenience incorporated a section for that purpose, in line with similar acts. A reference to the Commissioner of the General Land Office for his views upon this section is respectfully suggested.

I have examined the said section and find no objection thereto, except as to the requirement that the full amount of the purchase money shall be paid "within five years from the date of the first original entry," in addition to the requirement also contained therein that "the settler shall pay the money before making a final proof and receiving a certificate of entry," which under the general law may be done at any time after five years and before the expiration of seven years from the date of entry. I recommend that the section be amended by striking out the words "and within five years from the date of the first original entry," where they occur therein, and further amended by inserting the words "from the date of entry" immediately after the words "within two years," where they occur therein.

The said draft of a bill and accompanying papers are herewith returned.

Very respectfully,

S. W. LAMOREAUX,

Commissioner.

THE HON. SECRETARY OF THE INTERIOR.

A BILL to ratify and confirm an agreement with the Yankton tribe of Sioux or Dacotah Indians in South Dakota, and to make appropriations for carrying the same into effect.

Whereas J. C. Adams and John J. Cole, duly appointed commissioners on the part of the United States, did, on the thirty-first day of December, eighteen hundred and ninety-two, conclude an agreement with the chiefs, headmen, and other male adults of the Yankton tribe of Sioux or Dacotah Indians upon the Yankton Reservation, in the State of South Dakota, which said agreement is as follows:

Whereas a clause in the act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth (30th), eighteen hundred and ninety-three (1893), and for other purposes, approved July 13th, 1892, authorizes the "Secretary of the Interior to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress;" and

Whereas the Yankton tribe of Dacotah – now spelled Dakota and so spelled in this agreement – or Sioux Indians is willing to dispose of a portion of the land set apart and reserved to said tribe, by the first article of the treaty of April (19th) nineteenth, eighteen hundred and fifty eight (1858), between said tribe and the United States, and situated in the State of South Dakota:

Now, therefore, this agreement made and entered into in pursuance of the provisions of the act of Congress approved July thirteenth (13th), eighteen hundred and ninety-two (1892), at the Yankton Indian Agency, South Dakota, by J. C. Adams of Webster, S.D., John J. Cole of St. Louis, Mo., and I. W. French of the State of Neb., on the part of the United States, duly authorized and empowered thereto, and the chiefs, headmen, and other male adult members of said Yankton tribe of Indians, witnesseth:

ARTICLE I.

The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as aforesaid.

ARTICLE II.

In consideration for the lands ceded, sold, relinquished, and conveyed to the United States as aforesaid, the United States stipulates and agrees to pay to the said

Yankton tribe of Sioux Indians the sum of six hundred thousand dollars ($600,000), as hereinbefore provided for.

ARTICLE III.

SECTION 1. Sixty days after the ratification of this agreement by Congress, or at the time of the first interest payment, the United States shall pay to the said Yankton tribe of Sioux Indians, in lawful money of the United States, out of the principal sum stipulated in Article II, the sum of one hundred thousand dollars ($100,000), to be divided among the members of the tribe per capita. No interest shall be paid by the United States on this one hundred thousand dollars ($100,000).

SECTION 2. The remainder of the purchase money or principal sum stipulated in Article II, amounting to five hundred thousand dollars ($500,000), shall constitute a fund for the benefit of the said tribe, which shall be placed in the Treasury of the United States to the credit of the said Yankton tribe of Sioux Indians, upon which the United States shall pay interest at the rate of five per centum (5) per annum from January first, eighteen hundred and ninety-three (January 1st, 1893), the interest to be paid and used as hereinafter provided for.

ARTICLE IV.

The fund of five hundred thousand dollars ($500,000) of the principal sum, placed to the credit of the Yankton tribe of Sioux Indians, as provided for in Article III, shall be payable at the pleasure of the United States after twenty-five years, in lawful money of the United States.

But during the trust period of twenty-five years, if the necessities of the Indians shall require it, the United States may pay such part of the principal sum as the Secretary of the Interior may recommend, not exceeding $20,000 in any one year. At the payment of such sum it shall be deducted from the principal sum in the Treasury, and the United States shall thereafter pay interest on the remainder.

ARTICLE V.

SECTION 1. Out of the interest due to the Yankton tribe of Sioux Indians by the stipulations of Article III, the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior shall determine, as follows: For the care and maintenance of such orphans, and aged, infirm, or other helpless persons of the Yankton tribe of Sioux Indians, as may be unable to take care of themselves; for schools and educational purposes for the said tribe; and for courts of justice and other local institutions for the benefit of said tribe, such sum of money annually as may be necessary for these purposes, with the help of Congress herein stipulated, which sum shall not exceed six thousand dollars ($6,000) in any one year: *Provided*, That Congress shall appropriate, for the same purposes and during the same time, out of money not belonging to the Yankton Indians, an amount equal to or greater than the sum set aside from the interest due to the Indians as above provided for.

SECTION 2. When the Yankton tribe of Sioux Indians shall have received from the United States a complete title to their allotted lands, and shall have

assumed all the duties and responsibilities of citizenship, so that the fund provided for in section 1 of this article is no longer needed for the purposes therein named, any balance on hand shall be disposed of for the benefit of the tribe as the Secretary of the Interior shall determine.

ARTICLE VI.

After disposing of the sum provided for in Article V, the remainder of the interest due on the purchase money as stipulated in Article III shall be paid to the Yankton tribe of Sioux Indians semiannually, one-half on the thirtieth day of June and one-half on the thirty-first day of December of each year, in lawful money of the United States, and divided among them per capita. The first interest payment being made on June 30th, 1893, if this agreement shall have been ratified.

ARTICLE VII.

In addition to the stipulations in the preceding articles upon the ratification of this agreement by Congress, the United States shall pay to the Yankton tribe of Sioux Indians as follows: To each person whose name is signed to this agreement, and to each other male member of the tribe who is eighteen years old or older at the date of this agreement, twenty dollars ($20) in one double eagle, struck in the year 1892 as a memorial of this agreement. If coins of the date named are not in the Treasury, coins of another date may be substituted therefor. The payment provided for in this article shall not apply upon the

principal sum stipulated in Article II, nor upon the interest thereon stipulated in Article III, but shall be in addition thereto.

ARTICLE VIII.

Such part of the surplus lands hereby ceded and sold to the United States as may now be occupied by the United States for agency, schools, and other purposes shall be reserved from sale to settlers until they are no longer required for such purposes. But all other lands included in this sale shall, immediately after the ratification of this agreement by Congress, be offered for sale through the proper land office, to be disposed of under the existing laws of the United States to actual and bona fide settlers only.

ARTICLE IX.

During the trust period of twenty-five years such part of the lands which have been allotted to members of the Yankton tribe of Indians in severalty as the owner thereof can not cultivate or otherwise use advantageously may be leased for one or more years at a time. But such leasing shall be subject to the approval of the Yankton Indian agent, by and with the consent of the Commissioner of Indian Affairs; and provided that such leasing shall not in any case interfere with the cultivation of the allotted lands by the owner to the full extent of the ability of such owner to improve and cultivate his holdings. The intent of this provision is to compel every owner of allotted lands to cultivate the same to the full extent of his ability to do so before he shall have the privilege of

leasing any part thereof, and then he shall have the right to lease only such surplus of his holdings as he is wholly unable to cultivate or use advantageously. This provision shall apply alike to both sexes and to all ages, parents acting for their children who are under their control, and the Yankton Indian agent acting for minor orphans who have no guardians.

ARTICLE X.

Any religious society or other organization now occupying, under proper authority, for religious or educational work among the Indians, any of the land in this agreement ceded to the United States, shall have the right for two years from the date of the ratification of this agreement within which to purchase the land so occupied, at a valuation fixed by the Secretary of the Interior, which shall not be less than the average price paid to the Indians for these surplus lands.

ARTICLE XI.

If any member of the Yankton tribe of Sioux Indians shall within twenty-five years die without heirs, his or her property, real and personal, including allotted lands, shall be sold under the direction of the Secretary of the Interior and the proceeds thereof shall be added to the fund provided for in Article V for schools and other purposes.

ARTICLE XII.

No part of the principal or interest stipulated to be paid to the Yankton tribe of Sioux Indians under the

provisions of this agreement shall be subject to the payment of debts, claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of this agreement.

ARTICLE XIII.

All persons who have been allotted lands on the reservation described in this agreement, and who are now recognized as members of the Yankton tribe of Sioux Indians, including mixed bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe, enjoyed by full-blood Indians.

ARTICLE XIV.

All allotments of lands in severalty to members of the Yankton tribe of Sioux Indians not yet confirmed by the Government shall be confirmed as speedily as possible, correcting any errors in same, and Congress shall never pass any act alienating any part of these allotted lands from the Indians.

ARTICLE XV.

The claim of fifty-one Yankton Sioux Indians, who were employed as scouts by General Alf. Sully, in 1864, for additional compensation at the rate of two hundred and twenty-five dollars ($225) each, aggregating the sum of eleven thousand four hundred and seventy-five dollars

($11,475) is hereby recognized as just, and within ninety days (90) after the ratification of this agreement by Congress, the same shall be paid, in lawful money of the United States, to the said scouts or to their heirs.

ARTICLE XVI.

If the Government of the United States questions the ownership of the Pipe Stone Reservation by the Yankton tribe of Sioux Indians, under the treaty of April 19th, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, at least one competent attorney, to represent the interests of the tribe before the court. If the Secretary of the Interior shall not within one year after the ratification of this agreement by Congress refer the question of the ownership of the said Pipe Stone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipe Stone Reservation, and the same shall thereafter be solely the property of the Yankton tribe of Sioux Indians, including the fee to the land.

ARTICLE XVII.

No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded and sold to the United States, nor upon any of the lands within or comprising the reservations of

the Yankton Sioux or Da·ota Indians as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians. The penalty for the violation of this provision shall be such as Congress may prescribe in the act ratifying this agreement.

ARTICLE XVIII.

Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States. And after the signing of this agreement, and its ratification by Congress, all provisions of the said treaty of April 19th, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858.

ARTICLE XIX.

When this agreement shall have been ratified by Congress, an official copy of the act of ratification shall be engrossed, in copying ink, on paper of the size this agreement is written upon, and sent to the Yankton Indian agent to be copied by letter press in the "Agreement Book" of the Yankton Indians.

ARTICLE XX.

For the purposes of this agreement, all young men of the Yankton tribe of Sioux Indians, eighteen years of age or older, shall be considered adults, and this agreement,

when signed by a majority of the adult male members of the said tribe, shall be binding upon the Yankton tribe of Sioux Indians. It shall not, however, be binding upon the United States until ratified by the Congress of the United States, but shall as soon as so ratified become fully operative from its date.

A refusal by Congress to ratify this agreement shall release the said Yankton Indians under it.

In witness whereof the said J. C. Adams, John J. Cole, and I. W. French, on the part of the United States, and the chiefs, head men, and other adult male Indians on the part of the said Yankton tribe of Sioux or Dakota (spelled also Dacotah) Indians, have hereunto set their hands and affixed their seals.

Done at the Yankton Indian Agency, Greenwood, South Dakota, this thirty-first day of December, eighteen hundred and ninety-two (Dec.31st, 1892).

JAMES C. ADAMS (seal).

JOHN J. COLE (seal).

The foregoing articles of agreement, having been read in open council and fully explained to us, we, the undersigned chiefs, head men, and other adult male members of the Yankton tribe of Sioux Indians, do hereby consent and agree to all the stipulations therein contained.

(Omitted power of attorney statements.)

(Omitted names attesting that the names signed to the agreement are correct and all right in every respect, and

that more than a majority of the adult male members of the tribe have signed the said agreement.)

I hereby certify that the foregoing agreement was read verbatim and carefully and correctly interpreted in an open council of the tribe. Four interpreters were present and on duty, all of whom were instructed by the commissioners to see that every part of the instrument was correctly and plainly interpreted. Myself and one other interpreter looked on while Commissioner Cole read the agreement and saw that every word was read correctly.

At the close of this council the agreement was sealed up and was kept constantly under seal – except in the presence of members of the tribe as witnesses – until it was copied by letter press into the "Agreement Book" of the Yankton Indians, so that it was not possible to make any changes or alterations in it.

The agreement was also read and interpreted to the chiefs and to various parties of the headmen, and all members of the tribe had a good understanding of the various provisions of the agreement before signing it. And the same was signed freely and without any coercion or undue influence.

I also certify that more than a majority of the adult male members of the Yankton tribe of Sioux Indians have signed the said agreement.

C. F. PICOTTE,
U. S. Interpreter.

YANKTON INDIAN AGENCY,
Greenwood, S. D., December 31st, 1892.

(Omitted certification that the statement of the U. S. interpreter is correct.)

(Omitted power of attorney and notary statement.)

(Omitted statement that Mr. W. I. French was appointed as a member of this commission in the place of Dr. W. L. Brown, who resigned.)

Therefore, be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said agreement be, and the same hereby is, accepted, ratified, and confirmed.

SEC. 2. That for the purpose of carrying the provisions of this act into effect there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of six hundred thousand dollars, or so much thereof as may be necessary, of which amount the sum of five hundred thousand dollars shall be placed to the credit of said tribe in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum from the first day of January, eighteen hundred and ninety-three, said interest to be paid and distributed to said tribe as provided in articles five and six of said agreement. Of the amount herein appropriated one hundred thousand dollars shall be immediately available to be paid to said tribe as provided in section one of article three of said agreement. There is also hereby appropriated the further sum of ten thousand dollars, or so much thereof as may be necessary, which sum shall be immediately available, to be paid to the adult male members of said tribe as provided in article seven of said agreement. There is also hereby appropriated the further sum of eleven thousand four hundred and seventy-five dollars, which sum shall be immediately available, to be

paid as provided in article fifteen of said agreement: *Provided,*

That none of the money to be paid to said Indians under the terms of said agreement, nor any of the interest thereon, shall be subject to the payment of any claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of said agreement.

SEC. 3. That the lands of said agreement ceded, sold, relinquished, and conveyed to the United States, shall, upon proclamation by the President, be opened to settlement, and shall be subject to disposal only under the homestead and townsite laws of the United States, (except section twenty-three hundred and one of the Revised Statutes, which shall not apply), excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of the State of South Dakota: *Provided*. That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States, for the land so taken by him, in addition to the fees provided by law, the sum of three dollars and seventy-five cents per acre, one-half of which shall be paid within two years from the date of his original entry; but the rights of honorably discharged Union soldiers and sailors as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid.

SEC. 4. That every person who shall sell or give away any intoxicating liquors, or other intoxicants, upon any of the lands by said agreement ceded, or upon any of the lands included in the Yankton Sioux Indian Reservation as created by the treaty of April nineteenth, eighteen hundred and fifty-eight, shall be punishable by imprisonment for not more than two years and by a fine of not more than three hundred dollars.

GREENWOOD, YANKTON AGENCY, S. Dak
November 13, 1893

Sir: Under orders dated September 22, 1893, I proceeded to the Yankton (South Dakota) Agency to make a thorough investigation to ascertain whether any fraudulent methods were used or undue pressure exerted by the commission or any other persons to secure the assent of the Indians to the agreement dated December 31, 1892: whether they fully understand it, and if it was properly signed by a majority of the male adults of the tribe and represents their wishes in the matter.

November 2, 1893, word was sent out to the Indians to come in on Saturday and attend an open council called in the interest of the agreement of December 31, 1892. About 200 Indians attended and council was held in the street, between police station and agent's office, seats being prepared for them. Agent Foster and Inspector J. W. Cadman, present. Samuel De Fond, interpreter for us.

Council called to order at 10:30 a.m., November 4, 1893, and Agent Foster introduced me, and I told them I was sent here by the Secretary of the Interior to find out if there had been any improper methods used or undue pressure exerted to cause the Yankton Sioux to sign the

agreement of December 31, 1892, and if they understood it, and if it was the wish of the majority of the male adult members of this tribe that their surplus land be sold as stated in the agreement, etc.

I then asked them if they would like to hear the agreement read, they said they would. Henry Bonin (issue clerk) acting as interpreter. I then read the agreement to them, and at the close asked those present who had signed this agreement to step forward and answer to their names and answer the questions I should ask them. No one moved, and I then decided to call their names in the order they were signed on the agreement.

Each one present as their name was called responded to it, and I asked them if any undue pressure was brought to bear on them that caused them to sign it; if they did sign it, and if it represents their wishes still in the matter, and were anxious to have the treaty go through. Seventy-nine answered to their names. Many of them said I signed it and it's all right. Some said I signed it because I wanted the money; others said they signed to help the poor and old and infirm and sick. One said I signed it not to help me so much as others. I am all right but so many others are not.

Those that answered, giving consent, I checked off on the rolls with a "*;" those that wanted to talk marked them with a "t."

Padani James, No. 60 said: "I signed it; was promised the money last July and it did not come, and now I don't want to stick to it."

Edwin Garfield, No. 219, said: "They invited me to dinner and asked me to sign and I did; now I don't want it."

Mato Eli, No. 68, signed it after frequent urging by the runners, and now he thinks they ought to get more.

Sam Packard, No. 61, says: "I signed, but understood from Mr. Pecalt that I better sign before noon, and supposed he meant or lose my job." He being employed in the carpenter shop.

Peter, No. 215, says: "Was bribed to sign it by telling him they would see that he got his tree claim back if he signed it."

(No. 215 has been arranged satisfactorily by Col. Foster and was before this man made this statement.)

Joshua Packard, No. 98, signed it all right, but now he thinks they ought to have more, as did not get it last July.

Blue Tomahawk, No. 213, says: "A bargain is a bargain; they told me I was to get the money last July, and I did not."

Charles Sticker, No. 113, says he signed because they told him the treaty was made, and it was not.

Brown Owl, No. 181, signed it and afterwards decided not a good thing: not enough for land.

I then called the roll again; a few answered to their names and were checked.

I then told them that as several had expressed a desire to sign the agreement I would not give them an opportunity.

The sheet they signed was attached to back of the treaty and read as follows:

GREENWOOD, YANKTON AGENCY, S. DAK.
November 1, 1893

The undersigned members of the Yankton Sioux tribe of Indians having had the agreement for sale of surplus lands made under date of December 31, 1892, read and explained to us in open council and not having previously signed the same, now sign our names hereto as freely consenting and agreeing to all the provisions therein.

As it was the voice of the people I was after, I thought best to do this.

One man signed it and three or four said they would sign the first of the week. I then asked them when they wished me to meet them again and hear what the opposition had to say. They decided at once the following Saturday, as that was the day they had to be here to get their rations, and wished in the meantime I would ride over their fine reservation and let them know what I thought of it. I told them I would do so and that council was adjourned till Saturday, November 11, and I hoped they would get here as early in the morning as possible.

Monday was court day: a number answered to their names.

Tuesday I went out to see William Bean, a chief on the side of the opposition. He speaks English fairly well.

He said he wanted everything good – no crooked work – that he hoped the agreement would go through and be ratified by Congress.

The following day Mr. Bean (chief) called the agency for me and said he wished to talk with me a moment, and we went in the agent's private office, where Mr. Bean told me again he wanted no bad work, that he hoped it would go through and be ratified by Congress. I suppose he did not dare to say so in open council, as he and his followers had opposed it from the start – simply, I think, because the names of the chiefs did not head the list.

The opposition were very quiet and orderly in both councils, and it was remarked by several Indians that the last council was more to the point, with less bad blood than any they had ever had on the subject.

Running Bull (chief), Many Arrows, and three or four others, asked me to meet them at Rev. Williamson's house Thursday evening, as they wanted to talk to me.

They said as they looked around and saw how poor their people were, how much they wanted to make them even comfortable, and how few machines they had to cut their hay, it made them feel bad. That they all did hope this treaty would go through, as it had many friends in the tribe, and the number was on the increase.

Saturday, November 11, 1892, council called to order at 10:30 a. m. in council room; 150 Indians present.

Agent Foster and J. W. Cadman, inspector, present; Henry Bonin, interpreter, Peter St. Pierre relieving him for dinner and council in session till 3:30 p. m.

After calling the names of those that had not responded and checking off those that answered, I told the chiefs sitting close behind me – William Bean, Medicine Cow, White Swan, and Feather in the Ear – that I should be pleased to hear what they had to say and how long they would like to talk. William Bean, chief, answered at once, two hours and a half. I told them all right.

William Bean (chief), then said: The white man run as thick as grass on the prairie, and that I was chosen the one among that great number to come and see them; that he hoped I was a good, clean man: that the majority of the men sent out were not; that he did not think I ought to take signatures to ascertain what the majority of the tribe wanted; that some of the commissioners were bad men; that one of them threatened to cut off the rations and amenity goods if they did not sign, and that he thought undue pressure had been used.

White Swan (chief), said the three men sent by the Father from Washington were liars, and that they did many things which were all wrong. After talking a short time, he said as this man tell us to-day, and others that know more than we do have told us before, that it would be so much better for this tribe if they would be as one, not be pulling and hauling so all the time; all pull together and it would be so much better.

Running Bull (chief) said: When I look around and see how poor my people are and how much they need machines to cut the great amount of grass on the river bottom as well as the upland, that when the grass is ready to cut all want to cut at once, it made me feel the

this treaty should be carried through and all of us receive the benefit.

Medicine Cow (chief) said: Those commissioners that were here last winter did not do the fair thing; they paid blind men, poor men, money to come up and sign the treaty and he thought was not a fair thing at all. That Commissioner Adams was all right; that Commissioner Cole used to go out and take a drink before we had our councils. I do not like the commissioners: they did not treat me right. I got up to talk three times and they made me sit down.

I am glad you say the United States Government are good paymasters, for they owe us vast sums of money on the Fort Laramie treaty and I hope they will pay us. They will if they are good paymasters, as you say they are, but the price they pay or offer us for our surplus land is not enough. They moved the boundary line a while ago and beat us out of quite a tract of land, moved it three miles on the reservation.

Feather-in-the-Ear (chief), the most bitter of the opposition, did not speak: why, I do not know.

Isaac Stinger said: "If this treaty goes through, will the families of those that signed it and are now dead get their share?"

I told him I could not answer this, but would refer it to the Department.

Commissioner Cole did tell him, Medicine Cow, to sit down three times in one council, but Mr. Cole was asking for signatures and told him not to interrupt him with

their speeches as they had had plenty of time given them to make speeches.

I saw Thomas Arconge, the Indian that brought the blind men, and he said they might have paid for their dinners, but did not pay them money to sign or to come to agency.

One man, Joseph H. Cook, No. 191, was 18 years old last winter and for fear he might be considered too young, he wished to sign it again, and did so.

During the first council a quail flew from over the Missouri River and lit on the window sill where Joseph Connoyer sat: he held it through the council and then let it go. On Saturday, November 11, he came in and unsolicited signed the agreement; before this he had been a strong worker for the opposition.

All of those checked off with a (*) I have seen, with four or six exceptions, these having sent in word by their neighbors that they signed and it was all right. Twenty of the signers are soldiers, 5 are dead, 14 absent, and 6 temporarily absent. Four of the signers – Charles La Plante, No. 65, Isaac H. Tuttle, Joseph Nimrod, and Louis Archambeau – are members of other tribes.

Joseph Nimrod is a Yankton Sioux Indian, but married a Crow woman.

Felix Brunot and Charles Picotte, United States interpreter, would like very much to get some recognition from the Government for their services in aiding the commissioners in securing the majority of the male members of this tribe to sign this agreement.

They would also like to have an acre or two of the land at the agency reserve given to them to put their buildings on – buildings they have owned for many years. Mr. Picotte lives in his house, and has many years.

I have checked off with a (*) three names that the father or son or near relative have stated. They had recently talked with them and knew it was all right.

I tried hard to see them all, but could not do so.

Many Arrows said: "Many of these men say that they did not hear the agreement read enough and do not understand it, when the truth of the matter is it was read over and over again and we heard it so often that I can almost repeat it."

Several have said: "I am in favor of it and want to see it go through, but have not signed it because it makes feeling, and, knowing you have the majority of the male members and that those that do not sign will fare the same as those that do, we prefer not to sign."

No. 51, "Brings Many," an old man, says "he did not sign and that his old friends did not, and he wants more money for the land."

He is the only man that denies thus far having signed it.

Great interest is manifested now by nearly all that have signed the agreement to have it go through and be ratified by Congress and they be benefited by it.

Little Elk, No. 16, says: "Please tell the Secretary of the Interior that my daughter had 80 acres of land allotted to her and 40 acres of it was taken away afterwards,

and that I would like to have the 40 acres restored to her; also that I signed the treaty early and the opposition were at that time very bitter, and they killed one of my horses, so my team was broken up and I could not break up land which I calculated to do. If they can assist me, wish they would do so." (See Exhibit A.)

Felix Brunot also had a cow killed by them on account of the active part he took.

The opposition have asked me if there will be another commission sent here after my report is received to make a new treaty.

William Bean tells them he thinks there will be and that he will lead in the new treaty, and he told William Selwyn that he would have signed the treaty if his name could have headed the list.

William Selwyn says: "My father, 'Medicine Cow' (chief) made a mistake in the council the other day: that it was Adams instead of Cole that he thought was in habit of taking a drink, or at least acted that way before and during the council, and it was Adams that made him sit down."

An Indian wished me to ask you if you would please fix it so parents of children in the school here could be allowed to see them occasionally. That now they are obliged to visit them through the wire fence, and both take cold doing so. If they could talk with them in the laundry or somewhere it would please them, and also be allowed to see them when they are sick.

Some of the old and blind near agency would like to pick up what is left from the table at the schoolhouse if

the employees would put it in a dish at the door for them. Some of them have nothing to eat but corn and their rations.

Peter La Grand, No. 28: Elisha Dillon, No. 311: Henry Stricker, No. 95, have changed their minds since they signed and wished me to so state to the Secretary of the Interior.

No. 115, Not Afraid of the Pawnees, made no reply when asked if he signed it, but went out.

No. 91, John Cook, says: "As we did not get the payment last July, I am not in favor of it now."

Twenty-two new names are added to the number and the treaty is gaining friends every day, and so far I find (except in the case of Samuel Packard, and it is very doubtful if it was there) that no undue pressure was used or improper methods resorted to by the commissioners or any other persons last winter to secure signers. Please see Exhibit B.

Yours respectfully,

JOHN W. CADMAN,
United States Indian Inspector.

The Honorable SECRETARY OF THE INTERIOR

Articles of agreement between the United States of America and the Yankton Sioux Indians for the sale of their surplus lands, Yankton Indian Agency, Greenwood, S. Dak., December 31, 1892.

Whereas a clause in the act making appropriations for the current and contingent expenses of the Indian

Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth (30th), eighteen hundred and ninety-three (1893), and for other purposes, approved July 13, 1892, authorizes the "Secretary of the Interior to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress:" and

Whereas the Yankton tribe of Dacotah – not spelled Dakota and so spelled in this agreement – or Sioux Indians, is willing to dispose of a portion of the land set apart and reserved to said tribe by the first article of the treaty of April (19th) nineteenth, eighteen hundred and fifty-eight (1858), between said tribe and the United States, and situated in the State of South Dakota:

Now, therefore, this agreement, made and entered into in pursuance of the provisions of the act of Congress approved July thirteenth (13th), eighteen hundred and ninety-two (1892), at the Yankton Indian Agency, South Dakota, by J. C. Adams, of Webster, S. D., John J. Cole, of St. Louis, Mo., and I. W. French, of the State of Neb., on the part of the United States, duly authorized and empowered thereto, and the chiefs, headman, and other male adult members of said Yankton tribe of Indians, witnesseth:

ARTICLE I.

The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the

unallotted lands within the limits of the reservation set apart to said Indians, as aforesaid.

ARTICLE II.

In consideration for the lands ceded, sold, relinquished, and conveyed to the United States, as aforesaid, the United States stipulates and agrees to pay to the said Yankton tribe of Sioux Indians the sum of six hundred thousand dollars ($600,000) as hereinafter provided for.

ARTICLE III.

SEC. 1. Sixty days after the ratification of this agreement by Congress or at the time of the first interest payment, the United States shall pay to the said Yankton tribe of Sioux Indians, in lawful money of the United States, out of the principal sum stipulated in Article II, the sum of one hundred thousand dollars ($100,000) to be divided among the members of the tribe per capita. No interest shall be paid by the United States on this one hundred thousand dollars ($100,000).

SEC. 2. The remainder of the purchase money or principal sum stipulated in Article II, amounting to five hundred thousand dollars ($500,000), shall constitute a fund for the benefit of the said tribe, which shall be placed in the Treasury of the United States to the credit of the said Yankton tribe of Sioux Indians, upon which the United States shall pay interest at the rate of five per centum (5%) per annum from January first, eighteen hundred and ninety-three (Jan. 1st, 1893), the interest to be paid and used as hereinafter provided for.

ARTICLE IV.

The fund of five hundred thousand dollars ($500,000) of the principal sum placed to the credit of the Yankton tribe of Sioux Indians, as provided for in Article III, shall be payable at the pleasure of the United States after twenty-five years, in lawful money of the United States. But during the trust period of twenty-five years, if the necessities of the Indians shall require it, the United States may pay such part of the principal sum as the Secretary of the Interior may recommend, not exceeding twenty thousand dollars ($20,000) in any one year. At the payment of such sum it shall be deducted from the principal sum in the Treasury, and the United States shall thereafter pay interest on the remainder.

ARTICLE V.

SEC. 1. Out of the interest due to the Yankton tribe of Sioux Indians, by the stipulations of Article III, the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior shall determine, as follows: For the care and maintenance of such orphans and aged, infirm, or other helpless persons of the Yankton tribe of Sioux Indians as may be unable to take care of themselves; for schools and educational purposes for the said tribe, and for courts of justice and other local institutions for the benefit of the said tribe, such sum of money annually as may be necessary for these purposes, with the help of Congress herein stipulated, which sum shall not exceed six thousand dollars ($6,000) in any one year: *Provided*, That Congress shall appropriate for the same purposes and during the same time, out of

money not belonging to the Yankton Indians, an amount equal to or greater than the sum set aside from the interest due to the Indians, as above provided for.

SEC. 2. When the Yankton tribe of Sioux Indians shall have received from the United States a complete title to their allotted lands and shall have assumed all the duties and responsibilities of citizenship, so that the fund provided for in section 1 of this article is no longer needed for the purposes therein named, any balance on hand shall be disposed of for the benefit of the tribe as the Secretary of the Interior shall determine.

ARTICLE VI.

After disposing of the sum provided for in Article V the remainder of the interest due on the purchase money as stipulated in Article III shall be paid to the Yankton tribe of Sioux Indians semiannually, one-half on the thirtieth day of June and one-half on the thirty-first day of December of each year, in lawful money of the United States, and divided among them per capita. The first interest payment being made on June 30th 1893, if this agreement shall have been ratified.

ARTICLE VII.

In addition to the stipulations in the preceding articles, upon the ratification of this agreement by Congress, the United States shall pay to the Yankton tribe of Sioux Indians as follows: To each person whose name is signed to this agreement and to each other male member of the tribe who is eighteen years old or older at the date of this

agreement, twenty dollars ($20) in one double eagle, struck in the year 1892 as a memorial of this agreement. If coins of the date named are not in the Treasury coins of another date may be substituted therefor. The payment provided for in this article shall not apply upon the principal sum stipulated in Article II, nor upon the interest thereon stipulated in Article III, but shall be in addition thereto.

ARTICLE VIII.

Such part of the surplus lands hereby ceded and sold to the United States, as may now be occupied by the United States for agency, schools, and other purposes, shall be reserved from sale to settlers until they are no longer required for such purposes. But all other lands included in this sale shall, immediately after the ratification of this agreement by Congress, be offered for sale through the proper land office, to be disposed of under the existing land laws of the United States, to actual and bona fide settlers only.

ARTICLE IX.

During the trust period of twenty-five years, such part of the lands which have been allotted to members of the Yankton tribe of Indians in severalty, as the owner thereof can not cultivate or otherwise use advantageously, may be leased for one or more years at a time. But such leasing shall be subject to the approval of the Yankton Indian agent by and with the consent of the Commissioner of Indian Affairs: and provided that such leasing shall not in any case interfere with the cultivation

of the allotted lands by the owner thereof to the full extent of the ability of such owner to improve and cultivate his holdings. The intent of this provision is to compel every owner of allotted lands to cultivate the same to the full extent of his ability to do so, before he shall have the privilege of leasing any part thereof, and then he shall have the right to lease any such surplus of his holdings as he is wholly unable to cultivate or use advantageously. This provision shall apply alike to both sexes, and to all ages, parents acting for their children who are under their control, and the Yankton Indian agent acting for minor orphans who have no guardians.

ARTICLE X.

Any religious society, or other organization now occupying under proper authority for religious or educational work among the Indians any of the land under this agreement ceded to the United States shall have the right for two years from the date of the ratification of this agreement within which to purchase the land so occupied at a valuation fixed by the Secretary of the Interior, which shall not be less than the average price paid to the Indians for these surplus lands.

ARTICLE XI.

If any member of the Yankton tribe of the Sioux Indians shall within twenty-five years die without heirs, his or her property, real and personal, including allotted lands, shall be sold under the direction of the Secretary of the Interior, and the proceeds thereof shall be added to

the fund provided for in Article V for schools and other purposes.

ARTICLE XII.

No part of the principal or interest stipulated to be paid to the Yankton tribe of Sioux Indians, under the provisions of this agreement, shall be subject to the payments of debts, claims, judgments, or demands against said Indians for damages or depredations claimed to have been committed prior to the signing of this agreement.

ARTICLE XIII.

All persons who have been allotted lands on the reservation described in this agreement and who are now recognized as members of the Yankton tribe of Sioux Indians, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians.

ARTICLE XIV.

All allotments of lands in severalty to members of the Yankton tribe of Sioux Indians, not yet confirmed by the Government, shall be confirmed as speedily as possible, correcting any errors in same, and Congress shall never pass any act alienating any part of these allotted lands from the Indians.

ARTICLE XV.

The claim of fifty-one Yankton Sioux Indians, who were employed as scouts by General Alf. Sully in 1864, for additional compensation at the rate of two hundred and twenty-five dollars ($225) each, aggregating the sum of eleven thousand four hundred and seventy-five dollars ($11,475) is hereby recognized as just, and within ninety days (90) after the ratification of this agreement by Congress the same shall be paid in lawful money of the United States to the said scouts or to their heirs.

ARTICLE XVI.

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians, under the treaty of April 19th, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, a least one competent attorney to represent the interests of the tribe before the court.

If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as, and shall be, a waiver by the United States of all rights to the ownership of the said Pipestone Reservation, and the

same shall thereafter be solely the property of the Yankton tribe of the Sioux Indians, including the fee to the land.

ARTICLE XVII.

No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded and sold to the United States, nor upon any other lands within or comprising the reservations of the Yankton Sioux or Dakota Indians as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians. The penalty for the violation of this provision shall be such as Congress may prescribe in the act ratifying this agreement.

ARTICLE XVIII.

Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States And after the signing of this agreement, and its ratification by Congress, all provisions of the said treaty of April 19th, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858.

ARTICLE XIX.

When this agreement shall have been ratified by Congress, an official copy of the act of ratification shall be

engrossed, in copying ink, on paper the size this agreement is written upon, and sent to the Yankton Indian agent to be copied by letter press in the "Agreement Book" of the Yankton Indians.

ARTICLE XX.

For the purpose of this agreement, all young men of the Yankton tribe of Sioux Indians, eighteen years of age or older, shall be considered adults, and this agreement, when signed by a majority of the male adult members of the said tribe, shall be binding upon the Yankton tribe of Sioux Indians. It shall not, however, be binding upon the United States until ratified by the Congress of the United States, but shall as soon as so ratified become fully operative from its date. A refusal by Congress to ratify this agreement shall release the said Yankton Indians under it.

In witness whereof, the said J. C. Adams, John J. Cole, and J. W. French, on the part of the United States, and the chiefs, headmen, and other adult male Indians, on the part of the said Yankton tribe of Sioux or Dakota – spelled also Dacotah – Indians, have hereunto set their hands and affixed their seals.

Done at the Yankton Indian agency, Greenwood, South Dakota, this thirty-first day of December, eighteen hundred and ninety-two (Dec. 31st, 1892)

JAMES C. ADAMS, (seal)
JOHN J. COLE. (seal)

The foregoing articles of agreement having been read in open council, and fully explained to us, we, the undersigned, chiefs, headmen, and other adult male members

of the Yankton tribe of Sioux Indians, do hereby consent and agree to all the stipulations therein contained.

Witness our hands and seals of date as above.

(Omitted chart of names of Indian signers and corresponding English names and witnesses signatures.)

(Omitted chart of names of Indian signers and corresponding English names.)

(Omitted power of attorney.)

YANKTON INDIAN AGENCY,
Greenwood, S. Dak., December 31, 1892.

We, the undersigned white men married to women of the Yankton tribe of Sioux Indians and thereby interested in the affairs of the tribe, have carefully examined the agreement of this date, prepared by the Yankton Indian Commissioners, for the sale of the surplus lands – that is, of all the unallotted lands, about 168,000 acres – of the Yankton Indians to the United States, and we are well satisfied with the said agreement in all respects. We freely consent to the sale of these surplus lands at the price offered, and upon the terms proposed, and we also fully assent to all other provisions and stipulations of the said agreement.

Witness our hands and seals.

(12 names omitted)

YANKTON INDIAN AGENCY, *March 4, 1893.*

We, the undersigned, a committee appointed by the persons whose names are signed to the agreement

between the United States and the Yankton Indians, dated December 31, 1892, for the purpose of examining the signatures thereto, wish to submit the following report:

We have carefully examined the list of names signed to the said agreement and we find the same to be regular, correct, and all right in every respect, and that more than a majority of the adult male members of the tribe have signed the said agreement.

ISAAC H. TUTTLE.
HENRY T. STRICKER.
ELISHA DILLON.
CETANKIYA.
JOHN RANDELL.
THOMAS CANKUWANYAKA.
PETER LA GRANT.
JOHN MASKETO.

I hereby certify that the foregoing agreement was read verbatim and carefully and correctly interpreted in an open council of the tribe. Four interpreters were present and on duty, all of whom were instructed by the commissioners to see that every part of the instrument was correctly and plainly interpreted. Myself and one other interpreter looked on while Commissioner Cole read the agreement and saw that every word was read correctly.

At the close of this council the agreement was sealed up, and was kept constantly under seal – except in the presence of members of the tribe as witnesses – until it was copied by letter press into the Agreement Book of the Yankton Indians, so that it was not possible to make any changes or alterations in it.